

**CITY OF SANTA ROSA
GENERAL SERVICES AGREEMENT
WITH LYTEK INTERNATIONAL LIMITED
AGREEMENT NUMBER _____**

This "Agreement" is made as of this _____ day of _____, 2020, by and between the City of Santa Rosa, a municipal corporation ("City"), and Lystek International Limited a Delaware Corporation, ("Contractor").

RECITALS

A. City desires to deliver biosolids from the Laguna Wastewater Treatment Plant for processing and beneficial use.

B. City desires to retain a qualified contractor to accept a portion of the City's biosolids for processing in accordance with the terms of this Agreement.

C. Contractor represents to City that it is fully qualified to conduct the services described above.

D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in Exhibit A ("Scope of Services"). Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto solely for the purpose of defining the manner and scope of services to be provided by Contractor and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. The parties agree that any term contained in Exhibit A that adds to, varies or conflicts with the terms of this Agreement is null and void.

2. TIME FOR PERFORMANCE

The services described herein shall be provided as set forth in the Scope of Services attached at Exhibit A. Contractor shall devote such time and effort to the performance of services as is necessary for the satisfactory and timely performance of Contractor's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

3. STANDARD OF PERFORMANCE

Contractor shall perform all services required under this Agreement in the manner and

according to the standards currently observed by a competent practitioner of Contractor's occupation in California. All products and services of whatsoever nature that Contractor provides to City pursuant to this Agreement shall conform to the standards of quality normally observed by persons currently practicing in Contractor's occupation, and shall be provided in accordance with any schedule of performance specified in Exhibit A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, at any time during the term of this Agreement, desires the removal of any person assigned by Contractor to perform services pursuant to this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

4. COMPENSATION

The total of all fees paid to Contractor for the satisfactory performance and completion of all services set forth in Exhibit A shall not exceed the total sum of \$6,405,770. The Chief Financial Officer is authorized to pay all proper claims from Charge Number 130807.

5. BILLABLE RATES, PAYMENTS TO CONTRACTOR

a. Billable Rates. Contractor shall be paid for the performance of services at unit prices, as set forth in Exhibit B

b. Payments. Payments will be delayed where Contractor fails to provide the information required under subsection c. below or fails to comply with the insurance requirements in Attachment One to this Agreement. In no event shall the City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Invoices. Payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the person and address specified in the Agreement, bid, or purchase order. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Contractor for the partial month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for Contractor's failure to include reference to Agreement (including number) on the invoice **and for failure to maintain current insurance information with the City in accordance with insurance requirements hereunder.** In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in the Contractor's invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within 10 working days after June 30 to facilitate City fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment. In connection with any cash discount specified in the bid response, if applicable, or Contractor's Proposal, time will be computed from the date correct invoices are received by the person and address specified in the Agreement, bid, or purchase order. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check. All invoices shall contain the following information:

1. Contractor name and remittance address
2. Date of invoice issuance
3. Amount of invoice
4. City purchase order or Agreement number
5. Identification of Agreement or purchase order line item(s) (if multiple lines) and description of services provided
6. Date of completion of services

7. Detail of costs, including labor, materials, tax, etc.

e. In the event that the costs incurred by Contractor to process biosolids at its treatment plant increases as a result of a change in federal or state law, Contractor may make a written request, together with documentation to support the increase, including but not limited to documentation demonstrating the actual cost impact to Contractor's operations, to the City for a unit price adjustment. In response, the City may choose to negotiate an adjustment in the unit price(s) to be effective at a mutually agreed date, or choose to terminate the Agreement convenience under the terms of Section 6, below.

6. TERM, SUSPENSION, TERMINATION

a. The term of this Agreement shall be for five (5) years, commencing on November 1, 2020. City and Contractor may, upon mutual written agreement of both parties, extend this Agreement for up to two (2) additional three (3) year terms, or any combination thereof, not to exceed eleven (11) years.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time by giving a written notice of termination to Contractor. If City gives such notice of termination, Contractor shall immediately cease rendering services pursuant to this Agreement. If City terminates this Agreement, City shall pay Contractor the reasonable value of services rendered by Contractor prior to termination. In this regard, Contractor shall furnish to City such information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Contractor. City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement.

7. TERMINATION OF AGREEMENT FOR DEFAULT

If at any time 1) Contractor fails to conform to the requirements of this Agreement; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Contractor which may interfere with the performance of this Agreement; or 4) Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of this Agreement, which default is not fully corrected or remedied to the reasonable satisfaction of City within ten (10) days following the date a written notice thereof by City, then City shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to immediately terminate this Agreement. Any cost or expense incurred by City arising out of Contractor's breach or default hereunder, and for City's enforcement of these rights, shall be the obligation of Contractor and may, at City's discretion, be deducted from any amounts that may then be owing to Contractor under this Agreement, without any release or waiver of any other rights or remedies in law or equity to which City may be entitled.

8. INDEMNIFY AND HOLD HARMLESS AGREEMENT

Contractor shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same results from or arises out of the performance of this Agreement by Contractor, its officers, employees, agents, or sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employees' benefits acts. The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

City shall indemnify, defend, and hold Contractor harmless against any third-party claim(s) to the extent caused by the activities of the City in regard to the performance of the scope of this Agreement. Third-party claims means any claim, liabilities, damages, actions, losses, fines, penalties, damage or destruction of property, or other costs or expenses of any kind whatsoever incurred as a result of personal injury, or death, of person who is not a member of the City, with the exception of contractors, subcontractors, and/or vendors.

9. INSURANCE REQUIREMENTS

Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated herein by this reference. Maintenance of the insurance coverages as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for the City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the City as a material breach of this Agreement by Contractor, whereupon the City shall be entitled to all rights and remedies at law and in equity, including but not limited to the immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of the City pursuant to Section 11 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in Attachment One.

10. LEGAL REQUIREMENTS AND PERMITS; NONDISCRIMINATION

a. Legal Requirements and Permits. Contractor represents and warrants that Contractor has all licenses, permits, City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Contractor to practice its occupation and provide services under this Agreement. Contractor shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.; (iii) OSHA; and (iv) the Immigration Reform and Control Act of 1986. Contractor shall, if requested by City, provide certification and evidence of such compliance. If

Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

b. Non-Discrimination. With respect to the provision of goods or services under this Agreement, Contractor agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.

11. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract or assign any right or obligation under this Agreement without the written consent of the City. Any attempted or purported subcontract or assignment without City's written consent shall be void and of no effect. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this Agreement or any part thereof and Contractor hereby agrees to indemnify and hold City harmless against any and all such claims. In the event Contractor obtains the prior written consent of City to assign monies due or to become due under this Agreement, Contractor shall provide City a copy of the instrument of assignment duly executed by Contractor, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work. Upon notice and request by the City, Contractor shall promptly remedy, to include termination of any subcontract as appropriate and necessary, any default or failure to perform in a satisfactory manner the work undertaken by any subcontractor. Contractor shall be fully responsible and accountable to the City for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by them, to the same extent that Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.

12. BINDING EFFECT

This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the parties, subject to the provisions of Section 11, above.

13. RETENTION OF RECORDS

Contractor shall be required to retain any records necessary to document the charges for the services to be performed under this Agreement and make such records available to the City for inspection at the City's request for a period of not less than four (4) years.

14. ENTIRE AGREEMENT

This document, including all Exhibits and Attachment One, contains the entire agreement between the parties and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Santa Rosa City Code.

15. SEVERABILITY

If any portion of this Agreement or the application thereof to any person or circumstance

shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. WAIVER

Neither City acceptance of, or payment for, any service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

17. ENFORCEMENT OF AGREEMENT

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

18. CONTRACTOR NOT AGENT

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

19. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor, in the performance of Contractor's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by

Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.

d. The provisions of this Section 19 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

20. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

City

Brandalyn Tramel
Purchasing Agent
635 First Street, 2nd Floor
Santa Rosa, California 95404
Phone: (707) 543-3706
Fax: (707) 543-3723

Contractor

James Dunbar
General Manager
Lystek International Limited
1014 Chadbourne Road
Fairfield, CA 94534
Phone: (707) 430-5500
E-mail: JDunbar@lystek.com

21. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to the City that it is (a) a duly organized and validly existing Corporation, formed and in good standing under the laws of the State of Delaware (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Contractor hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONTRACTOR:

Name of Firm: Lystek International Limited

TYPE OF BUSINESS ENTITY (*check one*):

☐ Individual/Sole Proprietor
☐ Partnership
☒ Corporation
☐ Limited Liability Company
☐ Other (please specify: _____)

Signatures of Authorized Persons:

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Attachments:

Attachment One - Insurance Requirements
Exhibit A - Scope of Services or Contractor's Proposal
Exhibit B – Compensation/Rates

CITY OF SANTA ROSA
a Municipal Corporation

By: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM:

Office of the City Attorney

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
GENERAL SERVICES AGREEMENTS**

- A. Insurance Policies:** Contractor shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

	Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1.	Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2.	Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3.	Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
4.	Pollution Liability	(N/A)	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.
4.	"Third Party" Fidelity/Crime Surety Bond	\$ 500,000	Required for money pickup services.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the Agreement. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Contractor or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.