BILL NO. 43 ORDINANCE NO. 2020-43

AN ORDINANCE OF THE CITY OF TRENTON, MISSOURI APPROVING AN AGREEMENT BY AND BETWEEN THE CITY OF TRENTON, MISSOURI AND CUSTOMIZED ENVIRONMENTAL SOLUTIONS, INC. DBA TELUM, FOR THE REMOVAL, TRANSPORTATION, AND DISPOSAL OF LIME SLUDGE AT THE CITY WATER PLANT, IN THE CITY OF TRENTON AND AUTHORIZING THE MAYOR AND CITY CLERK OF THE CITY OF TRENTON, MISSOURI, TO EXECUTE THE SAME BY AND ON BEHALF OF SAID CITY.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF TRENTON, MISSOURI, AS FOLLOWS, TO WIT:

Section 1. The Mayor and City Clerk of the City of Trenton, Missouri, are hereby authorized and directed to execute said Agreement, a copy of which is attached hereto as Exhibit "A", for removal, transportation, and disposal of lime sludge at the City water plant, in Trenton, Missouri by and between Customized Environmental Solutions, Inc. dba Telum and the City of Trenton in and on behalf of the City of Trenton, Missouri.

Section 2. This Ordinance shall be in full force and effect immediately from and after its passage and approval.

PASSED this 14 day of September, 2020.

Linda Crooks
MAYOR AND EX OFFICIO PRESIDENT OF THE CITY COUNCIL OF THE CITY OF TRENTON, MISSOURI

ATTEST:

Cindy Napier
CITY CLERK

APPROVED this 14 day of September, 2020.

Linda Crooks
MAYOR OF THE CITY OF TRENTON, MISSOURI

ATTEST:

Cindy Napier
CITY CLERK

AGREEMENT

This agreement made and entered into this _____ day of _____, 20___ by and between City of Trenton, Trenton Municipal Utilities doing business in Missouri (hereinafter referred to as "City/TMU") and

Customized Environmental Solutions, Inc. dba Telum, a corporation organized and existing under the laws of the State of Iowa and authorized to do business in the State of Missouri, (hereinafter referred to as "Contractor"),

WITNESSETH:

That for and in considerations set forth herein, the sufficiency of which is hereby acknowledged the parties agree as follows:

A. GENERAL PROVISIONS

1. Purpose: The purpose of this agreement is to provide for the removal, transportation and disposal of City's water plant lime sludge by Contractor. City/TMU will provide the lime sludge in the form and quantities hereinafter specified. Contractor will remove the lime sludge from City's water treatment facility, transport and dispose of it as is hereinafter set forth. All responsibility for said lime sludge, after removal from the water treatment plant, will be the sole obligation of contractor and City/TMU assumes no responsibility for same, except as provided for in this agreement and as provided by law.
2. Duration of agreement: This agreement shall commence on the _____ day of _____, 20_____ and shall continue through April 30th, 2021 unless terminated sooner as provided herein.
    a.) The work shall be completed and final payment made by April 30, 2021.
3. Consideration by City/TMU: City/TMU shall pay contractor at the end of each land application period at the following prices:
    a.) The unit prices below shall be applicable for only the range of quantities so listed. For example, if 1,750 dry tons are removed the price for the first 1,500 dry tons shall be based on the unit price for the quantity up to 1,500 dry tons and the remaining 250 dry tons shall be based upon the unit price for 1,501 to 2,000 Dry Tons.
    b.) All lime sludge pumped, hauled, and applied at $ 43.28 per Dry Ton, up to 1,500 Dry Tons.
    c.) 1,501 to 2,000 Dry Tons at $ 41.50 per Dry Ton.
    d.) Over 2,000 Dry Tons at $ 41.50 per Dry Ton.
    e.) The price per Dry Ton includes all costs associated with pumping, transporting and applying the lime sludge to various sites.
    f.) Determination of dry tons per load: Contractor shall use a meter to measure the volume of water pumped out for land application. The suspended solids concentration shall be determined at least once per day worked in order to calculate the amount of tons applied at least as frequently as daily.

4. City/TMU shall withhold up to 5% retainage until all reports and documentation is submitted if partial payment is requested prior to submission of final documents.

Contractor shall keep and maintain a log book to record all loads, volumes, dry tons and similar data as detailed in Section C of this Agreement. Sampling and testing frequencies shall be of sufficient frequency such that each area utilized will have data specific to that area. The Contractor shall submit totals based on same at the end of each application period which City/TMU shall compare with its own records. City/TMU will authorize payment based on these load sheets, and payment shall be made to contractor within 30 days of invoice submission.

In the event discrepancies arise between City/TMU and Contractor on volumes, the parties shall immediately attempt to resolve said discrepancies and if unable to do so, shall be submitted to binding arbitration as provided in paragraph D (1).

B. RESPONSIBILITY OF CITY/TMU

1. City/TMU Duties: City/TMU shall perform its duties and responsibilities in a timely and workmanlike manner and shall use its employees and facilities to carry out the intent of this agreement.
2. City/TMU will provide access to the sludge storage lagoon at its water treatment facility plant in the quantities set forth below for land application.
   1.) Approximately 1500 dry tons per year.
3. City/TMU shall provide Contractor access to the solids loading facility on a 24-hour/day basis.
4. City/TMU shall keep and maintain its lime sludge management plan and shall timely seek and obtain such additional permits and licenses in the future as may be required to maintain said plan, Contractor shall cooperate with City/TMU in obtaining said permits and licenses upon request by City/TMU.
5. City/TMU will make efforts to assist the contractor in locating private land for use as a land application area but the Contractor shall have the final decision on what land will be utilized and the Contractor shall be responsible for obtaining the land application site(s).

C. RESPONSIBILITY OF CONTRACTOR

1. Contractor's duties: Contractor shall perform its duties and responsibilities in a timely and workmanlike manner and shall use its employees, equipment, and facilities to carry out the intent of this agreement. Contractor shall comply with all laws, rules, and regulations of any Federal, State or local jurisdiction relating to its duties under this agreement as same now exists or as they may be in the future.
2. The transportation and application of lime sludge shall be done in strict accordance with all Federal, State and local statues, laws, rules or regulations as same now exists or as they may be altered in the future.

3. Contractor shall provide City/TMU with all information requested by the City/TMU relating to its transportation and application of lime sludge including but not limited to:
    a.) Semi tractor load sheets and/or applicator load sheets
    b.) Agronomic rate of lime sludge applied
    c.) Gallons applied per site and total for the project
        1. The meter shall be read and the reading recorded at least as frequently as
            a. Start of the project
            b. Start of each day
            c. Start of each land application area
            d. End of each land application area
    d.) Dry Tons applied per site and total for the project
    e.) Acres covered per site
    f.) Drawing(s) of area covered, including approximate area boundary of application area and area of land receiving application.
    g.) Gallons / acre
    h.) Dry Tons / acre
    i.) Dates of application per area
    j.) Such other information as City/TMU may request
4. Sampling and Testing: Contractor shall be responsible for collecting and testing an adequate number of samples to ensure that test results are sufficiently representative of the work completed.
    a.) Sampling frequency: The contractor shall obtain a grab sample from each truck or tanker load. The grab samples can be accumulated into a composite sample for testing.
    b.) Sampling Method: A grab sample can be obtained such that it is a reasonable representation of the volume being pumped and land applied.
    c.) Sample storage: The Contractor shall store grab samples that are obtained to develop a composite sample in such a way that the composite sample is still representative of the water being pumped until the sample is tested.
    d.) Testing frequency: The Contractor shall keep samples separate such that each land application area is tested separately. The Contractor shall conduct a suspended solids test at least once every 6 hours when land application is underway. Testing for other parameters that require laboratory testing can be completed using a composite sample for each land application area.
5. Contractor shall be responsible for maintaining the loading facility at the water treatment facility plant in a clean and neat manner and shall promptly, at time of occurrence, clean up any spills at the location of the spill. Contractor shall be solely responsible for any spills in transit or at the application site and shall promptly, at time of occurrence, clean up any such spills. Transport vehicles will be kept clean and free of spilled lime sludge, including when equipment is transported to and from the work locations.

6. Contractor shall provide all equipment and personnel required to load, transport, store, and dispose of lime sludge. Contractor shall comply with all Federal, State and local laws relating to transportation and application of lime sludge, as well as local traffic laws and shall adhere to the directions of the water treatment facility director in operating vehicles at said plant to the extent of what areas are available for use. All equipment will be maintained in leak proof and spill proof condition.
7. Contractor shall focus efforts on removal of sludge from the holding basin in those areas of the holding basin as specified by the Owner. For 2020 contract, the removal area will generally be the north central one third of the lagoon.
8. Contractor shall apply the lime sludge to the application ground at a rate not to exceed agronomic rate per acre, or less if any law, statute, rule or regulation shall prohibit application at that rate.
9. Contractor shall be familiar with State/Federal rules and regulations governing the land application of lime sludge and shall adhere to these rules.
10. Contractor shall apply for all necessary permits associated with the project and shall develop all reporting required for compliance with land application regulations.
11. Contractor will maintain his equipment at his own expense and shall keep it in good condition. City's facilities shall not be used by Contractor for private use or the storage of Contractor's equipment. Disabled equipment shall be repaired or removed accordingly from City's property in a timely manner.
12. Contractor shall designate an administrator of this agreement, as well as up-to-date address and telephone number. Contractor shall also designate an on-site supervisor for the project and provide up-to date contact information for that on-site supervisor.
13. The Contractor shall be responsible for scheduling the work in coordination with the City/TMU and land owners.
14. In the event adverse weather conditions make application impossible or disrupts application, the Contractor shall be available to commence or continue application as soon as weather conditions permit.
15. Contractor shall be responsible for obtaining the land application site(s) as needed. The land owner and operator shall always have the authority over the use of the property and the Contractor shall always work with the said owner or operator to insure proper application and good public relations.
16. The application method shall be determined by the contractor and the land owner/operator.
17. Contractor shall be responsible for all lab testing required comply with State and Federal rules for land application of lime sludges.
18. Contractor shall be responsible for ensuring site safety shall coordinate operations with the Owners site security operations.
19. Contractor shall coordinate transportation routes through the City of Trenton with the City of Trenton and use only approved routes.
20. Contractor will be obligated to work with City/TMU and any other on-site vendors in the event City/TMU chooses to test out some equipment that may be part of a long term solution.

21. Contractor shall obtain and maintain all necessary Federal, State, and Local permitting, including, but not limited to, e-verify, safety training, and occupation licensing for the City of Trenton.

D. OTHER PROVISIONS

1. Governing Law: This Contract shall be governed by the laws of the State of Missouri and the parties agree that the proper venue for any legal action instituted in relation to this Agreement shall be the Circuit Court of Grundy County, Missouri.
2. Hold Harmless: To the fullest extent permitted by law, CONTRACTOR agrees to indemnify, defend and hold harmless the CITY, its officers, agents, volunteers, lessees, invitees and employees from and against all suits, claims, damages, losses, and expenses, including but not limited to attorneys' fees, court costs, or alternative dispute resolution costs arising out of or related to any such suit, claim, damage, loss or expense involving an injury to a person or persons, whether bodily injury or other personal injury (including death), or involving an injury or damage to property (including loss of use or diminution in value), but only to the extent that such suits, claims, damages, losses or expenses were caused by the negligence or other wrongdoing of CONTRACTOR, or of any supplier or subcontractor, or their agents or employees, directly or indirectly, regardless of whether caused in part by the negligence or wrongdoing of CITY or any of its agents or employees.
3. Insurance:
    a.) CONTRACTOR shall purchase and maintain the following insurance, at CONTRACTOR's expense:
        1. Commercial General Liability Insurance with a minimum limit of $1,000,000 each occurrence/$2,000,000 general aggregate written on an occurrence bases.
        2. Comprehensive Business Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by CONTRACTOR with a combined single limit of $1,000,000 minimum.
        3. Workers Compensation insurance with statutorily limits required by any applicable Federal or state law and Employers Liability insurance with minimum limit of $1,000,000 per accident.
        4. Contractors Pollution Liability Insurance with a minimum aggregate limit of $2,000,000.
        5. Transportation Pollution Liability Insurance with a minimum aggregate limit of $2,000,000.
    b.) CONTRACTOR shall make CITY an additional insured on each policy of insurance that CONTRACTOR is required to maintain under the contract documents. Similarly, CONTRACTOR shall require insurance with the same coverage and limits from its subcontractors and suppliers, and their insurance polices shall be endorsed to name the same additional insureds as required of CONTRACTOR. Each additional

insured endorsement shall expressly afford coverage to the additional insureds not only arising out of the named insured's operations or work but also arising out of the named insured's completed operations. All completed operations coverages shall be maintained by CONTRACTOR and its subcontractors or suppliers for five (5) years following the completion of the Work. Any coverage available to CITY as a named insured shall be secondary, so that the coverage to the CITY as an additional insured on the policies maintained by CONTRACTOR and subcontractors is primary. CITY reserves the right to selectively trigger any one or more insurance policies that afford CITY coverage, whether as a named insured or as an additional insured. CONTRACTOR agrees that CITY shall be provided at least sixty (60) days advance written notice of any cancellation or rescission of any policy that CONTRACTOR or any of its subcontractors or suppliers is required to maintain under the contract documents. Prior to commencing work, CONTRACTOR shall provide CITY certificates of insurance evidencing the required coverages. CITY's receipt or review of any certificate of insurance reflecting that CONTRACTOR or one of its subcontractors or suppliers has failed or may have failed to comply with any insurance requirement of the contract documents shall not constitute a waiver of any of

c.) CITY's insurance rights under the contract documents, with all such rights being fully and completely reserved by the CITY.

4. No provision of this agreement shall constitute a waiver of the CITY's right to assert a defense based on the doctrines of sovereign immunity, official immunity, or any other immunity available under law.
5. Provided CITY has paid CONTRACTOR all sums then earned by and payable to CONTRACTOR under this Contract (exclusive of any retention amounts properly withheld under the terms of this Contract), CONTRACTOR shall indemnify and hold CITY harmless from all suits, claims, damages, costs, expenses and fees (including attorneys' fees and litigation or mediation costs), actual or threatened, arising out of or related to any action actually filed or threatened by supplier or subcontractor, directly or indirectly, of CONTRACTOR, or by any agent or employee of any of them, stemming from any labor, materials or work furnished by that claimant for CONTRACTOR or any supplier or subcontractor, directly or indirectly, of CONTRACTOR. CITY may investigate and, in CITY's sole discretion, reach a good faith settlement of each such cause of action, and in such event, the foregoing indemnity and hold harmless provisions shall extend to the settlement amount paid by the CITY to the claimant to settle the claim. Any amounts due or to become due CITY under this paragraph shall be automatically credited against any amounts otherwise to be paid to CONTRACTOR under the contract documents. In the alternative to settling an actual or threatened claim directly with the claimant, CITY may issue a check payable jointly to the CONTRACTOR and the claimant for the amount determined by the CITY in good faith to be paid to settle the claim in which case the amount of the joint check shall be credited against the contract price.

6. Contractor is not an employee: It is understood and agreed the Contractor is performing under this agreement as an independent contractor and is not an employee of the City/TMU, nor its employees, officers and agents. Contractor shall timely pay all Federal and State employment taxes and insurance on its own employees and officers.
7. Contractor shall timely pay all obligations it incurs in the performance of this agreement and shall not allow any liens to be placed against City/TMU or its property, against Contractor or its property.
8. Patents: Contractor shall pay all royalties and license fees and shall hold and save the City/TMU, its officers, agents, servants and employees harmless from liability of any nature and kind, including costs and expenses for or on account of any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including it use by the city in this respect. The Contractor shall defend all suits and claims for infringement of any patent or license rights.
9. Assignment: This agreement is solely with Contractor based on its reputation and past performance and as such no sale, assignment, transfer or conveyance of same, in whole or in part, shall be permitted without written consent to same by City/TMU. Any attempt to sell, assign, transfer, or convey the agreement without consent of City/TMU shall be a breach of this agreement by Contractor.
10. Breach of contract and remedies: The essence of this agreement is the timely removal and application of City's lime sludge in the manner provided by Federal, State and local laws, statues and ordinances, as well as rules or regulations as same now exists or as the may be promulgated in the future. Any failure of Contractor to perform his duties and responsibilities under any clause of this agreement shall constitute a material breach of contract and City/TMU may, at its sole option, proceed with any legal or equitable remedy available to it. Any failure by City/TMU to proceed with action following a breach shall not be deemed to be a waiver of same.
    In addition to the foregoing remedies, City/TMU may elect to terminate this agreement upon 10 days written notice for breach of any of its terms by Contractor unless the defect or non-performance is remedied by Contractor. However, City/TMU may under any circumstances, immediately terminate this agreement without notice, upon violation by Contractor of any provision of this agreement resulting in a disruption of lime sludge removal from City's water treatment facility to the extent of exceeding City's storage capacities or the City/TMU or Contractor is ordered to cease its operations in lime sludge disposal by any Federal or State agency, commission, board or court, in which event this agreement shall be totally null and void.
11. Destruction of premises: In the event of total or partial destruction of City's water treatment facility by fire, windstorm, or other casualty, making it impossible for City/TMU to perform hereunder, the provisions of this agreement shall terminate until such time as City/TMU restores said premises.
12. A pre start-up conference shall be held before each application to discuss the farm site, application requirement, plant valving and pumping, and other items of importance.

13. BUY LOCAL PROVISION - As per the purchasing policy of the City of Trenton: It is the intent of this policy to promote local purchasing to the greatest extent practical. Local shall be defined as the trade area within Grundy County (not to exceed $1,000). In the event a local supplier can meet the need for a cost that is within five percent (5%) to any other known supplier, the item shall be purchased from a local vendor. The City council or board shall be the final authority on applying local incentive.
14. Any written notice shall be given by either party by certified mail, addresses to said party, with sufficient postage and addressed as follows:

CITY/TMU:

City of Trenton/
Trenton Municipal Utilities
1100 Main Street
Trenton, MO 64683

By: _____

Date: _____

Attest: _____

By: _____

CONTRACTOR:

Customized Environmental Solutions, Inc.
2045 Grand Avenue, Suite A
West Des Moines, Iowa 50265

By: Jared Burma

Date: September 8, 2020

Attest: Mackenzie Harvey

By: Mackenzie Harvey