

ORDINANCE NO. 1621

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH HEARD FARMS IN THE AMOUNT OF \$105/TON FOR SLUDGE DISPOSAL.

WHEREAS, the City of Canby requires the transportation and disposal of partially treated sewage sludge as part of its' wastewater treatment process;

WHEREAS, the Canby City Council is the local contract review board in accordance with Oregon Revised Statute (ORS) 279.075 and is vested with procurement authority under ORS 279A.050;

WHEREAS, the City of Canby proposed FY 24/25 budget allocates \$220,000 for sludge disposal,

WHEREAS, Heard Farms was selected as the qualified Contractor; and

WHEREAS, the Canby City Council has reviewed the contract price of \$105/ton and believes this to be in the best interest of the City to execute a contract with Heard Farms.

NOW THEREFORE, THE CITY OF CANBY, ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized on behalf of the City to enter into an agreement with Heard Farms in the amount of \$105/ton.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, May 15, 2024, ordered posted as required by the Canby City Charter; and scheduled for second reading on Wednesday, June 5, 2024, commencing at the hour of 7:00 PM in the Council Chambers located at 222 NE 2nd Avenue, 1st Floor Canby, Oregon.



Maya Benham, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 5th day of June, 2024, by the following vote:

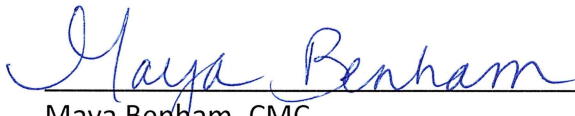
YEAS 5

NAYS 0



Brian Hodson
Mayor

ATTEST:



Maya Benham, CMC
City Recorder

AFFIDAVIT OF POSTING

STATE OF OREGON)
)
County of Clackamas) ss:
)
CITY OF CANBY)

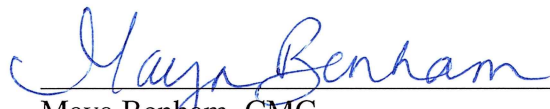
I, Maya Benham, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 15th day of May, 2024, the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1621 was read for the first time and passed by the vote of said Council and then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

Thereafter, on the 16th day of May, 2024, I posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

- 1. Canby Civic Building
- 2. Canby Post Office
- 3. City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and very conspicuous places for the period of more than five (5) days and until the very 5th day of June 2024.



Maya Benham, CMC
City Recorder

Subscribed and sworn to before me this 22 day of May, 2024.





Notary Public for Oregon
My Commission Expires: Dec. 12, 2026

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and HEARD FARMS, INC. (Contractor). The effective date of this Agreement is July 5, 2024 ("Effective Date").

- A. City requires services which Contractor is capable of providing, under terms and conditions hereinafter described.
- B. Contractor is able and prepared to provide such services as City requires, under those terms and conditions set forth.

The Parties Agree a Follows:

- 1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto and incorporated by reference. Terms and conditions in this Agreement will take precedence over any conflicting term or condition in an exhibit to this Agreement, including Exhibit A.
- 2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable. **Contractor understands it is required to obtain a City of Canby Business License for conducting business in the City. Contractor agrees to obtain a Canby Business License prior to commencing work under this contract.**
- 3. Compensation:
 - A. City agrees to pay Contractor according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "A" attached hereto. Contractor agrees that \$225,000.00 is the not to exceed price of this contract, without prior written approval from the City.
 - B. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
 - C. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
- 4. Contractor is Independent Contractor.
 - A. Contractor's services shall be provided under the general supervision of the City Administrator. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Paragraph #3 of this Agreement.
 - B. Contractor certifies that it is either a carrier-insured employer or a self-

insured employer as provided in Chapter 656 of the Oregon Revised Statutes.

- C. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City Employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.
- D. Contractor expressly acknowledges that as an independent contractor, Contractor is not entitled to indemnification by City or the provision of a defense by City under the terms of ORS 30.285.

5. **Subcontractors and Assignment.** Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions of this agreement as well as applicable OSHA regulations and requirements.

6. Work is Property of City. All work performed by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.

7. Term.

- A. This Agreement will run from the Effective Date until June 30, 2024. If the term ends on a specific date, the Agreement will terminate at 5pm on that date.
- B. This Agreement may be terminated by:
 - 1. Mutual written consent of the parties.
 - 2. Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
 - 3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
 - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
 - b. If Contractor fails to abide by the terms of this Agreement.
 - c. If services are no longer required.

8. Professional Standards and Compliance with Laws. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

By entering into this agreement, the Contractor represents and warrants that they have complied with the tax laws of the State of Oregon and the City of Canby. Further, for the duration of this contract, Contractor promises to continue to comply with said State and local tax laws. Any failure to comply with tax laws will be considered a default of this contract and could result in the immediate termination of this agreement and/or other sought damages or other such relief under applicable law.

Without limiting its obligation to comply with all applicable laws, Contractor will comply with the following laws, which the State of Oregon requires to be expressly incorporated into this Agreement: ORS 279B.220; ORS 279B.230; and ORS 279B.235.

9. Insurance. Insurance shall be maintained by the Contractor with the following limits:

A. For Comprehensive General Liability Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$2,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis.

B. For Automobile Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$2,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis for any vehicle used for City business or use otherwise related to this contract.

C. An umbrella or excess liability policy may be used to meet the above required limits of insurance, so long as the coverage in the umbrella or excess liability policy is concurrent with and at least as broad as the coverages required in Section 9.A and 9.B above.

D. For Worker's Compensation, Contractor shall provide a Certificate of Insurance naming the City of Canby as a Certificate Holder showing Worker's Compensation Insurance with statutory limits of coverage.

Procuring of such required insurance at the above-stated levels shall not be construed to limit the Contractor's liability hereunder. The coverage provided by insurance required under this Agreement shall be primary, and any other insurance carried by City shall be excess. Notwithstanding said insurance, Contractor shall be obligated

for the total amount of any damage, injury, loss, expense or related costs caused by or related to Contractor's negligence or neglect connected with this Agreement, and Contractor shall indemnify, defend and hold the City of Canby harmless from and against such damages, injuries, losses, expenses or costs.

10. Legal Expense. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys' fees, costs, and expenses as may be set by the court both at trial and all appeals there from.
11. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.
12. Notices. Any notice, bills, invoices, reports, or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, electronically, faxed, or personally delivered to the address below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing unless sooner received.
13. Applicable Law and Venue. The laws of the State of Oregon govern this Agreement, without regard to conflict of laws principles. Any dispute arising out of or related to this Agreement between the parties will be resolved in the Circuit Court of the State of Oregon, Clackamas County. The parties agree to the personal jurisdiction of Clackamas County Circuit Court.
14. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
15. Savings Clause. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.
16. Records. Contractor shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three (3) years after City makes final payment on this Agreement and all other pending matters are closed. In addition, Contractor shall allow City (or any of its authorized representatives) to audit, examine, copy, take excerpts from or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.
17. Third-Party Beneficiaries. The only parties to this Agreement are the City of Canby and the Contractor. No third-parties are intended to benefit from this Agreement, by implication or otherwise.

18. No Waiver. A waiver of any provision of this Agreement will only be effective if it is made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

CITY: Eileen Stein, Interim City Administrator
City of Canby
PO Box 930
Canby, OR 97013

CONTRACTOR: Richard Heard
Heard Farms, Inc.
578 Rogers Road
Roseburg, OR 97471

Please submit invoices to: Attn: Accounts Payable
City of Canby
PO Box 930
Canby, OR 97013
ap@canbyoregon.gov

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers.

CONTRACTOR:

Heard Farms Inc.

By: *Richard H. Heard*

Date: *7/3/2024*

CITY OF CANBY

By: *Eileen Stein*

Date: *7-11-24*

Subcontractors will be used ___ Yes No (If Yes, please complete List of Subcontractors attached to this Agreement)

Approved as to Form:

David F. Doughman
David Doughman, Interim City Attorney

8/4/23

EXHIBIT "A"

Memorandum of Agreed Terms for Personal Services Agreement between City of Canby, Oregon (City) and Heard Farms, Inc. for Sewage Sludge Pickup and Disposal

In addition to the terms agreed upon in the signed Personal Services Agreement, the City of Canby, Oregon (City) and Heard Farms, Inc. agree to the following:

1. The Personal Services Agreement shall be effective from July 1, 2024, through June 30, 2025.
2. Heard Farms will pick up and dispose of sewage sludge from the City of Canby Wastewater Treatment Plant located at 1480 NE Territorial Road in Canby, Oregon, at a price of \$105.00 per ton.
3. At the beginning of the contract, a baseline will be established for the cost of fuel. Heard Farms will submit a current invoice for fuel to the Wastewater Treatment Plant Supervisor to establish the baseline. If the price of fuel increases more than \$.50 per gallon during the contract term, Heard Farms will be compensated for the increase above \$.50 per gallon, over the baseline price.
4. The sewage sludge transported is not required to meet EPA Class B standards but shall be in the range of 5 to 9 on the pH scale. Any testing of the sewage sludge for disposal purposes will be the responsibility of Heard Farms and will be done at the Heard Farms facility. The City is not responsible for this analysis.
5. Heard Farms will supply the loader to fill the truck containers with sludge and the City will maintain the loader while it's on City property.
6. Heard Farms may access the site to pick up the sludge M-F 6:30 am to 3:30 pm and will pick up the sewage sludge each week.
7. The City does not guarantee a specific amount of sewage sludge each month, but parties assume that amounts should be consistent from month to month.
8. The City continues to reserve the right to haul off or have any excess sludge removed that Heard Farms cannot pick up and dispose of in a timely manner (by the end of each work week). The goal is to not store any sewage sludge.
9. Ownership of the sewage sludge transfers to Heard Farms upon pick-up by Heard Farms.
10. Heard Farms must have their own spill management, notification and cleanup plan.