

# SOIL REMOVAL CONTRACT 2023

This Soil Removal Contract (the “Contract”) is dated as of **February \_\_\_\_, 2023** by and between the **TOWN OF WILTON**, a Connecticut municipal corporation (the “Town”) and **RED TECHNOLOGIES, LLC** a **limited liability company** organized and existing under the laws of the State of **Connecticut** (the “Contractor” or “RED”).

## SECTION 1 THE WORK, PRICE AND PAYMENT SCHEDULE

Contractor shall furnish all the materials, machinery, implements, tools, labor, services, and other items of every kind required to perform and complete in a good and workmanlike manner, the following work: **removal of catch basin soil material from Department of Public Works yard at Allen’s Meadow Park and transportation to licensed disposal facilities** (the “Work”).

In consideration of Contractor’s satisfactory completion of the Work, the Town agrees to pay the Contractor the sum of **Sixty Nine and 00/100 (\$69.00) per ton of Sediment for Landfill Cover**<sup>1</sup>. The price is based on Contractor’s estimate of the total tonnage of waste material to be removed.

The following conditions apply to the Work.

1. Soil must meet the disposal facility’s physical and chemical acceptance criteria. (i.e. Six inch minus, no debris, no clay, no sediment, metal or deleterious materials). Materials must be less than 15% moisture and pass a liquid paint filter test. Pricing is subject to change if the material does not meet facility permit acceptability requirements, or if material needs to be remixed for stabilization purposes at the facility.
2. Acceptance of any volume of soil at any facility on any given day is dependent upon disposal facilities daily operational capacity requirement/limitations or other restrictions set by the facilities and is beyond the control of RED. The client agrees to hold RED harmless to the fullest extent permitted by law for any loss of productions or delays resulting from operational restrictions imposed by the disposal facility and or railroad. Additional charges may apply if disposal facility venue is changed due to closure both temporary and/or permanent.
3. If applicable to this Contract, disposal of any PCB containing waste materials at the TSCA approved receiving facility are subject to US EPA authorization under the 40 CFR 761.61(b). Any underlying hazardous constituents must be identified. PCB containing waste materials cannot be listed or a characteristically hazardous RCRA waste. Additional charges will apply if material is a RCRA, TSCA, RCRA/TSCA or contains a UHC constituent waste that deviates from item description above.

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<sup>1</sup> Meets CT RSR GB BMC / IC DEC Criteria 22 ton minimum per load.

Contractor will submit invoices, together with supporting documentation described below (i. e., weigh slips) periodically as the Work progresses in accordance with a work schedule established by the Director of Public Works (the “Director”) or the Director’s designee (the “Work Schedule”).

Payments will be due within thirty (30) days after receipt by the Town’s Finance Department of each invoice bearing indicia that the Director has approved the completion of the Work described in the invoice.

## **SECTION 2 ADMINISTRATION BY THE TOWN**

The Work to be performed under this Contract shall be administered on behalf of the Town by the Director, or his/her designated representative.

## **SECTION 3 DESIGNATED REPRESENTATIVE**

Prior to commencing Work, Contractor shall provide the Director with the name, e-mail address and mobile phone number of the official within Contractor’s organization who will be responsible, on behalf of Contractor, for responding to questions, comments and instructions of the Director (the “Designated Representative”). The Designated Representative shall be available on all days when Work is in progress to meet with the Director at the site at which the Work is being performed within two (2) hours of receipt of a telephone call, voice mail message, text or e-mail from the Director. If the Designated Representative will be out of the office or otherwise unavailable on a day or days when Work is in progress, the Designated Representative shall notify the Director in advance and provide the name, e-mail address and mobile phone number of an alternate official within Contractor’s organization who will be responsible, on behalf of Contractor, for responding to questions, comments and instructions of the Director. Contractor’s Designated Representative is as follows:

Name	E-Mail	Mobile Phone
Mark Barnes	mbarnes@redtechllc.com	860-894-3503

## **SECTION 4 INSPECTION OF SITE AND CONDITIONS**

Contractor represents that its representatives have visually inspected the site at which the waste materials are located. Contractor represents that it is fully informed regarding all existing conditions, both natural and manmade at the site.

## **SECTION 5 DATES OF COMMENCEMENT AND COMPLETION**

Contractor will begin Work within ten (10) days of receipt of a Notice to Proceed issued by the Director. Contractor will complete all Work by December 31, 2023 (the “Completion Date”). If, at any time, Contractor concludes that an extension of the Completion Date or any interim deadline indicated in the Work Schedule is required due to weather conditions, conditions or restrictions imposed by disposal facilities or other circumstances beyond Contractor’s control, Contractor shall deliver to the Director a written change order request. No extension of the Completion Date will

be permitted unless memorialized in a written change order request approved and signed by the Director.

## **SECTION 6 CONTINGENCIES, EXTRA WORK AND CHANGES**

Whenever the Director determines that, from any cause not foreseeable at the time of this Contract, the scope of Work should be altered to provide for changes, deletions, contingencies, or additional or extra Work, the Director may issue a change order to Contractor who shall forthwith commence the Work necessary to comply with the change order. No extra work shall be commenced or undertaken nor shall any be deleted until the Director has issued and signed a written change order.

## **SECTION 7 NO COLLUSION OR FRAUD**

Contractor represents that: (a) the only person or persons interested as principal or principals in the Contractor's proposal/quotation are named therein; (b) this Contract has been secured without any connection with any person or persons other than those named; (c) this Contract was secured without collusion or fraud; and (d) no elected or appointed official or employee of the Town, nor any member of the immediate family of any such person, has or shall have a financial interest in the performance of this Contract, in the supplies, work or business to which it relates, or in any portion of the profits thereof.

## **SECTION 8 PAYMENT FOR QUANTITIES REMOVED**

As the Work progresses in a manner that is satisfactory to the Town, the Town will make payments to Contractor, based upon the quantities of waste materials removed. Weigh slips will be submitted with all invoices to verify quantities prior to payment. Contractor shall deliver to the Director, for each shipment of waste material, a manifest certified by the disposal facility indicating acceptance of the shipment by the disposal facility. Payment shall be made only after acceptance of the Work by the Director.

## **SECTION 9 ACCEPTANCE OF PAYMENT**

Acceptance by the Contractor, or anyone claiming by or through it, of any interim or final payment hereunder shall constitute and operate as a release of the Town from any and all claims of any liability or responsibility to Contractor for anything done to, furnished for, relating to or in connection with the Work, and for any act or omission on the part of the Town or any of its elected or appointed officials or employees unless Contractor has delivered a detailed written statement of claim to the Town prior to the acceptance of payment. The statement must specify the items and details upon which the claim is based and any claim shall be limited to the items indicated in the statement. The Contractor's refusal to accept the final payment, as tendered, shall constitute a waiver of any right to interest thereon.

## **SECTION 10 RIGHT TO SUSPEND WORK OR TERMINATE CONTRACT**

If, at any time, the Director determines that the Work is not being performed according to applicable laws or regulations or for the best interest of the Town, the execution of the Work by Contractor may be temporarily suspended by the Director; or the Director may terminate the Contractor's engagement under this Contract while the Work is in progress, and thereupon proceed with the Work in such manner and by such process as the Director determines to be in the best interest of the Town.

#### **SECTION 11 NO SUBCONTRACTING**

Contractor shall not, except with the prior written authorization of the Director, subcontract any portion of the Work.

#### **SECTION 12 LAWS, PERMITS, AND LICENSES**

Contractor shall observe all federal, State, and local laws and regulations and agrees to procure all necessary licenses and permits, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the Work. Contractor shall permit only individuals holding commercial driver's licenses (CDL) to perform the Work.

#### **SECTION 13 SUCCESSORS AND ASSIGNS**

This Contract shall bind the successors, assigns and representatives of the parties hereto. Notwithstanding, this Contract may not be assigned by Contractor nor shall Contractor's rights, title or interest herein or hereto be assigned or transferred without the prior written consent of the Director.

#### **SECTION 14 INSURANCE AND INDEMNIFICATION**

Contractor shall obtain, at its own cost and expense, all insurance indicated below and keep the same in continuous effect until the Director indicates the termination of the Contractor's responsibilities under this Contract. Before commencing the Work, Contractor shall furnish the Town with a certificate of insurance, and shall thereafter provide renewal certificates, as appropriate, evidencing such coverage written by a company or companies acceptable to the Town. Each insurance certificate shall be endorsed to name the Town as an additional insured party and shall provide that the insurance company shall notify the Town by certified mail at least thirty (30) days in advance of termination of or any change in the policy.

Contractor expressly agrees to at all times indemnify, defend and hold harmless the Town, and its elected and appointed officials and employees, on account of any and all demands, claims, damages, losses, litigation, financial costs and expenses, including attorneys' fees, and compensation arising out of personal injuries (including death), any damage to property, real or personal, and any other loss, expense or aggrievement directly or indirectly arising out of, related to or in connection with the Work to be performed by Contractor, its employees, agents, subcontractors, material suppliers, or anyone directly or indirectly employed by any of them. Contractor shall and does hereby assume and agree to pay for the defense of all such claims, demands, suits, proceedings and litigation. The provisions of this paragraph shall survive the

expiration or early termination of this Contract and shall not be limited by reason of any insurance coverage.

A. Minimum Limits of Insurance. Contractor shall maintain minimum limits of insurance as follows:

1. General liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability: Workers compensation limits as required by the State of Connecticut and Employer's liability limits of \$500,000 per accident.
4. Contractual Liability: \$1,000,000 combined single limit per occurrence and aggregate for bodily injury personal injury and property damage applying to the indemnity agreement which is part of this Contract.
5. Umbrella or Excess Liability; \$5,000,000.

B. Deductibles and Self Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by Town. At the option of Town, either: the insurer may reduce or eliminate such deductibles or self-insured retentions as respects the Town; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability Coverages

- a. The Town, its elected and appointed officials and employees are to be covered as additional insured as respects: liability arising out of activities performed by or on the behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; and premises owned, occupied or used by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its elected or appointed officials or employees.
- b. Comprehensive Auto Liability Coverage applies to all automobiles owned, leased, hired or borrowed by Contractor.
- c. Contractor's insurance coverage shall be primary insurance as respects Town, its elected and appointed officials and employees. Any insurance or self-insurance maintained by Town shall be excess of the Contractor's insurance and shall not contribute with it.

- d. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town.
  - e. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except to the limits of the insurer's liability.
- 2. Workers Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against Town, its elected and appointed officials and employees for losses arising from Work performed by Contractor for the Town.
  - 3. All Coverages. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town.
- D. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.
- E. Verification of Coverage. Contractor shall furnish the Town with certificates of insurance and with original endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by Town before the Work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, at any time.
- G. Hold Harmless. Contractor shall save, keep, and hold harmless the Town and its elected and appointed officials and employees from all damages, costs or expenses in law or equity that shall at any time arise or be set up because of damages to property or personal injury received by reason of or in the course of performing the Work which may be occasioned by any willful or negligent act or omission of Contractor, any of Contractor's employees, or any subcontractor. The Town will not be held liable for any accident, loss or damage to the Work prior to its completion and acceptance. Contractual liability insurance shall be required in accordance with the limits to be established by the Town.
- H. Indemnification. Upon failure of Contractor to furnish, deliver and maintain insurance as required by this Section, this Contract, at the election of the Town, may be declared suspended, discontinued or terminated. Failure of Contractor to take out and/or to maintain the taking out and/or maintenance of any required insurance, shall not relieve Contractor from any required insurance, or from any liability under this Contract, nor shall the insurance requirements be construed to conflict with the obligations of Contractor concerning indemnification.

## **SECTION 15 GENERAL PROVISIONS**

- A. This Contract shall be deemed binding only to the extent that money is available and appropriated by the Town for payment in accordance with the terms hereof and no liability on account of this Contract shall be incurred by the Town beyond such moneys as are properly made available and appropriated for the project.
- B. The relationship of Contractor to the Town is that of an independent contractor. Contractor covenants and agrees that it will conduct itself consistent with such status; that it will neither hold itself nor any of its employees or agents out as nor claim to be an officer, agent, or employee of the Town by reason of this Contract and that it will not, neither for itself nor on behalf of any of its employees, agents, or subcontractors, by reason of this Contract, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
- C. Contractor hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency. If the Contractor is unable to certify the above statement, it shall attach a certified statement explaining such to this Contract. Contractor further agrees to include the foregoing certification in any subcontract or purchase order which it may enter into in furtherance of the Work contemplated under this Contract.
- D. No elected or appointed official or employee of the Town, shall have any personal interest, direct or indirect, in this Contract and Contractor covenants that no person having such interest shall be employed in the performance of this Contract.
- E. This Contract shall be construed in accordance with the laws of the State of Connecticut, and any action at law in connection herewith shall be brought in Connecticut state courts.
- F. Contractor shall comply with all applicable laws, ordinances and codes of the State of Connecticut and the Town, and shall commit no trespass on any private property in performing any of the Work.
- G. This Contract incorporates all the understandings of the parties hereto, supersedes any and all agreements and negotiations reached and all commitments made by the parties prior to the execution of this Contract, whether oral or written, and shall not be released, amended or modified in any way unless by a written instrument signed by the parties hereto.
- H. If any provision of this Contract is held invalid, the balance of the provisions of this Contract shall not be affected thereby if the balance of the provisions of this Contract would then continue to conform to the requirements of applicable laws.
- I. Each and every provision and clause required by law to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though

such provisions and clauses were included herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon written consent of the parties, this Contract shall forthwith be physically amended to make such insertion.

- J. All notices of any nature referred to in this Contract shall be in writing and sent by registered or certified mail, postage prepaid, to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the Town:                   Town of Wilton  
  Attention: Director of Public Works  
  238 Danbury Road  
  Wilton, CT 06897

To Contractor:               RED Technologies, LLC  
  Attention: Mark Barnes  
  173 Pickering Street  
  Portland, CT 06480

- K. Contractor represents that it is licensed to do business in the Connecticut and that it has the experience, equipment, labor force and skill to perform the Work.

- L. This Contract may be executed in one or more counterparts, each of which will be deemed to be an original of this Contract and all of which, when taken together, will be deemed to constitute one and the same contract. The exchange of copies of this Contract and of signature pages by Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Contract as to the parties and may be used in lieu of the original Contract for all purposes.

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IN WITNESS WHEREOF, the duly authorized representative of the Town and Contractor have set their hands as of the date first listed on Page 1.

**TOWN OF WILTON**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**CONTRACTOR:  
RED TECHNOLOGIES, LLC**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

*{Signature page to Waste Removal Contract}*