

**CONTRACTOR AGREEMENT
(Removal and Disposal of Lime Sludge)**

THIS AGREEMENT is made this 17 day of April, 2013 between the **City of Lake Worth**, Florida, a municipal corporation, hereinafter the "CITY", with its principle office located at 7 North Dixie Highway, Lake Worth, Florida 33460, and **P.J.'S Land Clearing & Excavating, Inc.**, a corporation authorized to do business in the State of Florida, hereinafter the "CONTRACTOR", with its principle office located at 9396 Pinion Drive, Lake Worth, FL 33467.

RECITALS

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida;

WHEREAS, the CITY issued Invitation for Bid UT-WT-12-13-111 (hereinafter "IFB") for the procurement of all goods and services necessary for the Removal and Disposal of Lime Sludge (hereinafter the "Services");

WHEREAS, CONTRACTOR submitted a bid to perform the Services described and set out in the IFB;

WHEREAS, the CITY desires to accept CONTRACTOR's bid in order for CONTRACTOR to render the Services to the CITY as provided herein;

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the Services hereunder in a professional and competent manner;

WHEREAS, the CITY finds awarding IFB to the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the Services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

I. Term: The term of this Agreement shall be three (3) years from the date this Agreement is approved by the CITY. The CITY, via the CITY MANAGER, and the CONTRACTOR may extend this Agreement for two (2) one-year renewal periods. The CITY, however, may terminate the Agreement subject to the provisions of Section XIII of this Agreement.

II. Scope of Services:

2.1 The scope of Services to be provided under this Agreement is the removal and disposal of wet lime sludge as more specifically set forth in the IFB. Services shall commence upon the issuance of a purchase order and/or a notice to proceed by the City.

2.2 The CONTRACTOR represents to the CITY that the Services to be performed under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the CONTRACTOR's Services shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the Services to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the Services provided for herein in a professional and competent manner.

III. USE OF AGENTS OR ASSISTANTS: To the extent reasonably necessary to enable the CONTRACTOR to perform its Services hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance its duties. All costs of the services of, or expenses incurred by, such agents or assistance shall be paid by the CONTRACTOR.

IV. PROJECT MANAGEMENT: Both parties shall appoint a Project Manager who shall meet to coordinate, review and insure performance by the CONTRACTOR under this Agreement. The Project Manager appointed by the CITY will oversee the administration of the Services to be performed by the CONTRACTOR under this Agreement but is not authorized to modify this Agreement.

V. EQUIPMENT: The CONTRACTOR shall provide all equipment necessary to complete the Services to be performed hereunder. In the event CONTRACTOR requires equipment from the CITY, the CONTRACTOR shall meet and confer with the CITY before Services commences. In the event the CITY's equipment is to be utilized, any costs chargeable to the CONTRACTOR shall be agreed upon in advance of the commencement of the Services.

VI. FEE AND ORDERING MECHANISM

6.1 For actual Services performed under this Agreement, the CITY shall pay the CONTRACTOR a fee based on the following unit prices for the first three (3) years of this Agreement:

(a) Clean Sludge Ponds & deposit wet lime sludge at on-site drying location:

\$3.55 / cubic yard.

(b) Loading & Removal of dried lime sludge from Water Plant Complex:

\$4.95 / cubic yard.

The total amount of this Agreement shall not exceed \$92,100 (Ninety-Two Thousand One Hundred Dollars) per year. The fee to be paid for any renewal period shall be agreed to in writing by the CONTRACTOR and the CITY (by the City Manager) prior to commencement of the renewal period(s).

6.2 Should the CITY require additional Services not included in this Agreement, fees and payment for such additional Services will be set forth in a separate Addendum, as authorized in accordance with the CITY's procurement code prior to any such additional Services being performed by the CONTRACTOR. .

6.3 The City's ordering mechanism for all Services performed under this Agreement shall be a City Purchase Order; however, the terms and conditions stated in a City Purchase Order shall not apply. CONTRACTOR shall not perform Services under this Agreement without a City Purchase Order specifically for this purpose. CONTRACTOR shall not perform work which is out of scope, nor exceed any not to exceed amounts expressed on the Purchase Order. Note that the City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize Services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the Services in any subsequent Fiscal Year. If the budget is approved for said Services, the City will issue a new Purchase Order each Fiscal Year, for required and approved Services.

VII. MAXIMUM COSTS: The CONTRACTOR expressly acknowledges and agrees that the total cost to complete all Services is as specified herein and no additional costs shall be authorized without prior written approval from CITY.

VIII. INVOICE: The CONTRACTOR shall submit an itemized invoice to the Project Manager for approval prior to receiving compensation. The invoice shall include an itemized summary of total costs billed and shall be made at such intervals as agreed to

with the Project Manager, but no more frequently than once per month. All invoices shall include a description of the Services provided, a brief itemization of costs associated with each task or project phase and the total task or project costs to date. The CONTRACTOR shall be paid within thirty (30) days receipt of an approved invoice for Services provided.

IX. AUDIT BY CITY: The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such Services performed or to be performed under this Agreement.

X. COPIES OF DATA/DOCUMENTS: Copies or original documents prepared by the CONTRACTOR in relation to Services provided under this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

XI. OWNERSHIP: Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

XII. WRITTEN AUTHORIZATION REQUIRED: The CONTRACTOR shall not make changes in the Scope of Services without first obtaining written authorization from the CITY for such additional Services. Additional Services provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

XIII. DEFAULTS, TERMINATION OF AGREEMENT

13.1 If the Project Manager deems that the CONTRACTOR is in default for failure to supply an adequate working force or has failed in any other respect to satisfactorily perform the Services specified in this Agreement; or, is in material breach of a term or condition of this Agreement, the Project Manager may give written notice to the CONTRACTOR specifying defaults to be remedied within ten (10) days. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within ten (10) days or commence good faith steps to remedy the default to the reasonable satisfaction of the Project Manager, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such Services; and/or, the CITY may withhold any money due

or which may become due to the CONTRACTOR for such expense and/or Services related to the claimed default. Alternatively, or in addition to the foregoing, if after ten (10) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the Project Manager, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph 13.1.

13.2 Notwithstanding paragraph 13.1, the CITY reserves the right and may elect to terminate this Agreement at any time. At such time, the CONTRACTOR would be compensated only for those Services which have been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph 13.2.

XIV. INSURANCE

14.1 The CONTRACTOR shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to the CITY, the types and amounts of insurance conforming to the minimum requirements set forth in the IFB. The CONTRACTOR shall not commence Services until the required insurance is in force and evidence of insurance acceptable to the CITY has been provided to, and approved by, the CITY. An appropriate Certification of Insurance shall be satisfactory evidence of insurance. Until such insurance is no longer required by this Contract, the CONTRACTOR shall provide the CITY with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

14.2 The insurance provided by the CONTRACTOR shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City Commission shall be excess of, and shall not contribute with, the insurance provided by the CONTRACTOR. Except as otherwise specified, no deductible or self-insured retention is permitted.

14.3 Compliance with these insurance requirements shall not limit the liability of the CONTRACTOR. Any remedy provided to the CITY by the insurance provided by the CITY shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the CONTRACTOR) available to the CITY under this Agreement or otherwise.

14.4 Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR shall relieve the CONTRACTOR from responsibility to provide insurance as required by this Agreement.

14.5 The CONTRACTOR's failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement. In the event of any termination or suspension, the CITY may use the services of another contractor without the CITY incurring any liability to the CONTRACTOR.

14.6 At its sole discretion, the CITY may obtain or renew the CONTRACTOR's insurance, and the CITY may pay all or part of the premiums. Upon demand, the CONTRACTOR shall repay the CITY all monies paid to obtain or renew the insurance. The CITY may offset the cost of the premium against any monies due the CONTRACTOR from the CITY.

XV. WAIVER OF BREACH: The waiver of either parts of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

XVI. INDEMNITY:

16.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suits, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees for all litigation, arbitration, mediation, appeal expenses) ("Claims" hereafter) to the extent arising out of or related to the acts or neglect of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed in the performance of the Services. This indemnity provision specifically includes indemnifying, defending and holding the CITY and its officers, agents, employees and representatives from and against any and all Claims arising out of or related to the removal and disposal of the dried sludge from the Water Plant Complex.

16.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

16.3 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

XVII. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

17.1 This Agreement consists of the terms and conditions provided herein; the IFB (including all drawings, maps, specifications, exhibits and addenda attached thereto or referenced therein); and, the CONTRACTOR's responsive bid. To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the IFB (including all drawings, maps, specifications, exhibits and addenda attached thereto) next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

17.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

XVIII. ASSIGNMENT

18.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit of any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

18.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

XIX. SUCCESSORS AND ASSIGNS: Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

XX. WAIVER OF TRIAL BY JURY: TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

XXI. GOVERNING LAW AND REMEDIES:

21.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

21.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

XXII. TIME IS OF THE ESSENCE: Time is of the essence in the completion of tasks and services as specified herein.

XXIII. NOTICES: All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

Michael Bornstein, City Manager
City of Lake Worth
7 North Dixie Hwy
Lake Worth, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

P.J.'S Land Clearing & Excavating, Inc.
Attn: Patrick Wilson
9396 Pinion Drive
Lake Worth, FL 33467

XXIV. SEVERABILITY: Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

XXV. DELAYS AND FORCES OF NATURE:

25.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the Services for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the Services, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the Services.

25.2 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

XXVI. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Agreement.

XXVII. LIMITATIONS OF LIABILITY: Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

XXVIII. PUBLIC ENTITY CRIMES: CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

XXIX PREPARATION: This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

XXX PALM BEACH COUNTY IG: In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

XXXI ENFORCEMENT COSTS: All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

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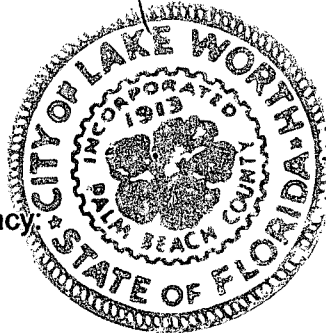
IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written.

CITY OF LAKE WORTH, FLORIDA

By: [Signature]
Pam Triolo, Mayor

ATTEST:

[Signature]
Pamela J. Lopez, City Clerk



Approved as to form and legal sufficiency:

[Signature] FOR
Glen J. Torcivia, City Attorney

CONTRACTOR: P.J.'S Land Clearing & Excavating, Inc.

By: [Signature]
Print Name: Patrick Wilson
Title: President

[Corporate Seal]

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 4th day of April, 2013 by Patrick Wilson as President (title), of P.J.'s Land Clearing & Excavating, Inc., a corporation authorized to do business in the State of Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

[Signature]
Print Name: Savannah Gibson
My commission expires: March 31, 2015

