

## AGREEMENT

This agreement, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the City of Margate, Florida, a municipal corporation, hereinafter referred to as “City”, and H&H Liquid Sludge Disposal, Inc., a Florida Corporation, hereinafter referred to as “H&H”.

### WITNESSETH

Whereas, “City” desired to formalize the terms and conditions of an agreement with “H&H” to haul and dispose of its Domestic Wastewater Treatment Plant Class B biosolids and Domestic Water Treatment Plant sludge.

Now, therefore, in consideration of the foregoing and the mutual covenants herein, it is agreed as follows:

1. Definitions: The following terms shall have the meaning herein ascribed to them.
  - a. “City’s Wastewater Treatment Plant” and “Water Treatment Plant” located at 6630 N.W. 9<sup>th</sup> Street, Margate, Florida and 980 NW 66<sup>th</sup> Avenue, Margate, Florida 33063 respectively.
  - b. “Wastewater Treatment Plant Biosolids” shall mean the dewatered solid residue having a minimal content of 12% solids and a treatment equal to “Class B” standards established by the DEP FAC 62-640 and 40 CFR Part 503.
  - c. “Domestic Wastewater Liquid Residuals” shall mean liquid with solid content of the one (1) to four (4) percent solids meeting Class B standards established by the DEP FAC 62-640 and 40 CFR Part 503.
  - d. “Domestic Water Plant Lime Sludge” shall mean those stockpiled sludge excavated from the “City” lime holding pond or dewatered lime sludge from a press.
  - e. “H&H Biosolids Management” shall mean a “Double AA” (AA) processing center at a company owned location in Florida or other facilities designated by H&H.
2. Term: The term of this agreement shall commence on the date of acceptance by City and shall continue for a period of one year. City shall have the option of (4) one year renewals based upon mutual agreement between both parties.

However, should the City of Margate fail to refuse to budget funds for this or any similar item for any one fiscal year subsequent to the initial year of this agreement, then this agreement shall be deemed terminated and no duties and responsibilities shall flow from same, provided, however, that H&H shall have ninety (90) days notice before termination of this agreement, should this paragraph apply.

H&H agrees to the following:

A. Wastewater Treatment Plant Biosolids

1. H&H shall provide two (2) dump trailers for biosolids dewatering operation of the City so that 12% or better cake biosolids may be removed on a timely basis. Additional trailers will be available as necessary.
2. H&H shall dispose of the biosolids in an environmentally acceptable manner, at permitted site, in accordance with DEP FAC 62-640 procedures that are approved by State and local regulatory agencies.
3. Disposal operations by H&H shall be governed by specific conditions of the City permits which shall make then contingent on site conditions such as weather, groundwater table, etc. H&H shall be bound by disposal regulatory restrictions.
4. H&H shall be responsible for preparation of DEP Biosolids Site Permits for disposal sites including their procurement and licensing for proper disposal of Biosolids. H&H shall provide the City with pertinent site data and site-specific information needed so that the City can meet the reporting requirements as part of the City's treatment plant operating permits.
5. H&H will provide monthly regulatory reports to the City, so as the City can meet its DEP reporting responsibility.
6. Upon the breakdown of the City's dewatering process equipment, H&H agrees to accept and dispose liquid sludge at one hundred forty six dollars (\$146.00) per one thousand (1000) gallons.
7. H&H shall provide a serviceable tractor so that utility personnel may position trailers utilized for both water and wastewater biosolids loading. The City's use of the tractor shall be used in a safe operating manner. City operator will be responsible for repairs for any abusive or operational errors. Said tractor shall remain on the premises of the Department of Environmental and Engineering Services of the City of Margate but H&H shall be responsible for the maintenance, insurance and liability. The tractor shall be legally licensed, tagged and be registered to be operated on public thoroughfares.

B. Water Treatment Plant Sludge

1. H&H will provide one (1) dump trailer for waste lime sludge removal. Additional trailers shall be available as needed for sludge removal.
2. Lime sludge shall be disposed of by Contractor in accordance with regulatory guidelines.
3. H&H will pick up fully loaded trailer at least once a week or within 24 hours after receipt of notice for pick up as needed.
4. H&H shall provide an alternative disposal site, so as not to disturb the normal activities of disposal of lime.

City shall provide as follows:

A. Wastewater Treatment Plant Biosolids

1. City on the faithful performance of this contract by Contractor shall pay H&H for the removal and disposal of wastewater biosolids Thirty-two dollars and forty-three cents (\$32.43) per cubic yard or \$972.90 per load. This includes environmental fee charged by County.
2. City personnel shall load individual trailers to approximately thirty (30) cubic yard volumes for removal by H&H. Removal times are to be as required on a six day per week basis.
3. All biosolids to be supplied to Contractor shall be classified as Class B or land applicable biosolids in character, pursuant to criteria established by the State of Florida as outlined in FAC Chapter 62.640.
4. City shall provide H&H with monthly copies of all quality control reports provided to the Florida DEP which shall establish proof of class level biosolids to be transported by H&H.

B. Water Treatment Plant Sludge

1. City on the faithful performance of the contract by Contractor shall pay H&H for the removal of pond excavated sludge sixteen dollars and seventy cents (\$16.70) per cubic yard or \$334.00 per load. There will be approximately 20 cubic yards per load.
2. City will provide H&H with non-hazardous lime sludge for hauling and disposal.
3. If an alternative lime site has to be used for disposal, the City shall pay H&H a mutually agreed price to haul to an H&H land application site, its facility or landfill.

General Provisions

1. H&H shall at its own expense do the work required in this agreement and shall furnish all labor, materials, tools, and equipment necessary for execution of said work in strict conformance with this agreement.
2. H&H is responsible for procuring and licensing the Wastewater Treatment Plant Biosolids disposal sites.
3. H&H shall provide the City with a surety bond in the amount of Two Hundred Thousand dollars (\$200,000.00) securing the faithful performance of the terms and conditions set forth in this agreement. H&H may elect to provide the City with an irrevocable letter of credit in the same amount in lieu of the bond.
4. In the event that H&H is unable to perform this agreement obligations due to the liquid or dewatered biosolids or sludge produced by the City containing constituents which render the biosolids or sludge non-land applicable material, as

defined in Florida Administrative Code 62-640 and the Federal Clean Water Act. H&H shall not be held liable for such inability to perform under this agreement. Although City produced non-land applicable biosolids or sludge relieves H&H of his contractual obligations due to the inability to perform his responsibilities under the contract, it is nevertheless expected that H&H shall cooperate fully with the City's efforts to render the biosolids or sludge a land applicable material.

5. **Impossibility of Performance:** In the event that either through a documented act of God or a regulatory change of any applicable, federal, state, county, or municipal law renders compliance with this agreement impossible, then either City or H&H shall have the right, upon (30) days prior written notice to the other party, to open negotiations for modifications to this agreement to address the regulatory changes. Either party may terminate this agreement if such negotiations for a modification cannot be concluded within ninety (90) days.
6. H&H shall indemnify and defend the City from any and all Civil claims arising under this agreement, whether alleged to have arisen from the conduct of the City or employees, or not. Further, H&H shall indemnify and defend the City from any allegation of regulatory or governmental violation which may arise pursuant to this agreement, whether same was alleged to have arisen from the City or its employees, or not.
7. **INSURANCE – AT THE TIME OF EXECUTION OF THE CONTRACT, THE CONTRACTOR SHALL SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGE AND SPECIFICALLY PROVIDING THAT THE CITY OF MARGATE IS AN ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGE AND THE OPERATIONS OF THE CONTRACTOR UNDER THE CONTRACT.** Insurance Companies selected must be acceptable by the City. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be cancelled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the City by certified mail.

The CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverage and minimum limits of liability: **Additionally, any subcontractor hired by the Contractor for this project shall provide insurance coverage as stated herein.**

(a) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employer's Liability Act and the Homes Act. Employer's Liability Insurance shall be provided with a minimum of One Hundred Thousand and xx/100 dollars (\$100,000.00) per accident. Contractor shall agree to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

(b) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the Contractor in the performance of the Work with the following minimum limits of liability:

\$1,000,000.00 Combined single Limit, Bodily Injury and Property Damage Liability, per occurrence

(c) Comprehensive General Liability with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability, per occurrence

Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage:

1. Premises and operations;
2. Independent Contractors;
3. Product and Completed Operations Liability;
4. Broad Form Property Damage;
5. Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract; and Personal Injury coverage with employment contractual exclusions removed and deleted.

7.1 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the following minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

7.2 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against City with the express intention of the parties being that the required insurance coverage protect both parties as the primary coverage for any and all losses covered by the above described insurance.

7.3 The Contractor shall ensure that any company issuing insurance to cover the requirements contained in this Contract agrees that they shall have no recourse against City for payment or assessments in any form on any policy of insurance.

7.4 The clauses "Other Insurance Provisions" and "Insurers Duties in the Event of an occurrence, Claim or Suit" as it appears in any policy of insurance in which City is named as an additional named insured shall not apply to City. City shall provide written notice of occurrence within a reasonable time of the actual notice of such an event.

7.5 The Contractor shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.

7.6 The Contractor agrees to perform the Work under the Contract as an independent Contractor, and not as a subcontractor, agent or employee of City.

7.7 Violation of the terms of this paragraph and its subparts shall constitute a breach of the Contract and City, at its sole discretion, may cancel the Contract and all rights, title and interest of the Contractor shall thereupon cease and terminate.

7.8 City's Liability and Insurance - City shall not be responsible for purchasing and maintaining any insurance to protect the interests of Contractor, subcontractors or others on the Work. City specifically reserves all statutory and common law rights and immunities and nothing herein is intended to limit or waive same including, but not limited to, the procedural and substantive provisions of Florida Statute 768.28 and Florida Statute 95.11.

7.9 Loss of Use Insurance - The City, at the City's option, may purchase and maintain such insurance as will insure the City against loss of use of the City's property due to fire or other hazards, however caused. The City waives all rights of action against the Contractor, and its contractors and their agents and employees, for loss of use of the City's property, including consequential losses due to fire or other hazards, however caused, to the extent covered by insurance under this Paragraph.

8. The above unit pricing shall remain firm during the course of this agreement except for an annual cost of living increase tied directly to the consumer price index and a fuel surcharge adjustment. Any increase of the consumer price index as published by the Department of Labor as applicable to the Southeastern United States, or if not available, then the consumer price index shall be based upon such other document or formula as agreed by the parties. Should the parties not be able to agree upon any document or formula, then this agreement shall be deemed terminated upon fifteen (15) days notice after the parties have failed to agree upon any additional documented or formula as above stated.
9. Adjustments in fuel costs will be allowed as a fuel surcharge after the initial ninety (90) day period and every three month period thereafter. Requests for fuel price increases must be made in writing to the "City" at least fifteen (15) days in advance. All requests for fuel price increases are subject for review and approval by the City (Environmental/Engineering Services). Increases in fuel prices shall be based on the US EIA Weekly Retail On-Highway Diesel Prices found on (<http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>) increase in cost for the most recent three month period if the index changed more than 5%. The City will review fuel costs every three months to determine if costs decreased more than 5% to adjust pricing accordingly.
10. This agreement shall be governed by the laws of the State of Florida and venue for any action, at law or equity, to enforce or interpret this agreement or any provision thereof shall be in Broward County, Florida.
11. **Waiver of Jury Trial** - City and H&H hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the performance of the work, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

12. The relationship of H&H to the City shall be one of Independent Contractor and H&H shall not be deemed an agent, employee, nor servant of the City of Margate.
13. This agreement as of the day and year first written shall be in three (3) counterparts, each of which for all purposes, shall be deemed an original.
14. In the event of environmental, regulatory or choice of "City" desiring H&H to process the City biosolids from a Class "B" product to a Double "A" (AA) beneficial re-use product, and to relieve the City of any and all liability under Chapter 403, FS, Chapter 62-640, FAC, title 40 CFR, Parts 252 and 503 regulations. The City's cost shall be \$31.76 per cubic yard. By this agreement, H&H however, does not accept liability or responsibility for the City's Wastewater Treatment Plant operations.
15. This agreement represents the entire understanding of the parties as to the matters contained herein. No prior oral or written understanding shall be of any force and effect with respect to those matters covered hereunder. This agreement may only be modified by amendment in writing signed by each party.
16. Discriminatory Vendor List - An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.
17. Public Entity Crimes Statement - "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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplies, subcontractor, or consultant 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 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
18. Disputes - Notwithstanding any other provisions provided in this contract, any dispute arising under this contract which is not disposed of by agreement shall be decided the City Manager of the City of Margate, Florida, who shall reduce his decision in writing and furnish a copy thereof to the Contractor. The decision of the City Manager of the City of Margate, Florida and those persons to whom he delegates authority to decide disputes, shall be final and conclusive unless determined by a Court of competent jurisdiction to be fraudulent, capricious, arbitrarily, or grossly erroneous as to necessarily imply bad faith, or not supported by substantial evidence.
19. H&H will always provide a favorable pricing for the City with consideration to the City's equipment and disposal needs. The City would be eligible to request a change in the agreement if a project, which H&H services, of similar specifications and disposal needs arises at a lower cost. Such change to be effective retroactively as of the effective date of the eligible agreement.

20. **Public Records** - CONTRACTOR agrees to keep and maintain public records in CONTRACTOR's possession or control in connection with CONTRACTOR's performance under this Agreement. CONTRACTOR additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the OWNER.

Upon request from the OWNER custodian of public records, CONTRACTOR shall provide the OWNER with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the OWNER.

Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONTRACTOR shall be delivered by the CONTRACTOR to the CITY MANAGER, at no cost to the OWNER, within seven (7) days. All such records stored electronically by CONTRACTOR shall be delivered to the OWNER in a format that is compatible with the OWNER'S information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONTRACTOR shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

Any compensation due to CONTRACTOR shall be withheld until all records are received as provided herein.

CONTRACTOR's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the OWNER.

**Section 119.0701(2)(a), Florida Statutes**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

**Custodian of Records: JOSEPH KAVANAGH, CITY CLERK**

**Mailing address: 5790 Margate Boulevard, Margate, FL 33063**

**Telephone number: 954-935-5325**

**Email: JJKAVANAGH@MARGATEFL.COM**



IN WITNESSETH WHEREOF, CITY and CONTRACTOR have signed this Contract in duplicate. One counterpart each has been delivered to CITY and CONTRACTOR. All portions of the Contract Documents have been signed or identified by CITY and CONTRACTOR.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

**CITY OF MARGATE**

\_\_\_\_\_  
Arlene R. Schwartz, Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Samuel A. May, City Manager  
\_\_\_\_ day of \_\_\_\_\_, 2018

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Joseph J. Kavanagh, City Clerk  
\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
James A. Cherof, City Attorney  
\_\_\_\_ day of \_\_\_\_\_, 2018

CONTRACTOR

H&H LIQUID SLUDGE DISPOSAL, INC.

FOR CORPORATION:

  
\_\_\_\_\_  
Steve Hacht, President

11th day of September, 2018

(CORPORATE SEAL)

  
\_\_\_\_\_  
Katie Matthews, Secretary

11th day of September, 2018

Contract between the City of Margate and "H&H" Liquid Sludge Disposal, Inc. to haul and dispose of its Domestic Wastewater Treatment Plant Class B Biosolids and Domestic Water Treatment Plant sludge.