

## TERM SERVICES AGREEMENT FOR WET LIME RESIDUALS HAULING

THIS AGREEMENT is made and entered by and between The City of Daytona Beach, Florida (the "CITY"), and Dedicated Transport, LLC, a foreign limited liability company authorized to do business in Florida with a principle address of 4366 Mt. Pleasant St., NW, North Canton, OH 44720 ("CONTRACTOR").

WHEREAS, CONTRACTOR is currently under a written contract with Gainesville Regional Utilities (GRU), to haul wet lime residuals, under terms and conditions specified therein; and

WHEREAS, the CITY is in need of wet lime residual hauling; and

WHEREAS, the CITY desires to have CONTRACTOR perform such services, subject to the terms and conditions of the above-referenced Contract with the specific exceptions noted herein, in general accordance with CONTRACTOR's contract with GRU referenced above; and

WHEREAS, CONTRACTOR is willing to perform the installation under such terms and conditions.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

**1. Scope of Service.** CONTRACTOR will haul wet lime residuals (i.e., lime sludge). The work is more fully described in the written contract between CONTRACTOR and Gainesville Regional Utilities, dated 7/25/2018 awarded pursuant to ITB No. 2018-093 Lime Slurry Hauling (hereinafter the "GRU Contract"), attached hereto and incorporated herein by reference as Exhibit A.

**2. Contract Term/Renewal.** The Initial Term of this Agreement will commence on the Effective Date (which is the date last signed below) and end on September 30, 2023. The CITY will have the option to renew this Agreement for up to 6 months by giving CONTRACTOR written notice. Such notice must be provided at least 60 days prior to the end of the Initial Term unless waived by CONTRACTOR.

**3. Payment and Billing.** Payment will be based on the unit prices set forth in the GRU Contract.

**4. Incorporation of Contract; Exceptions.** All other terms and conditions of the GRU Contract will apply to this Agreement, except to where such terms and conditions conflict with the provisions herein. These exceptions to the terms and conditions include the following:

(a) All references to "Gainesville Regional Utilities", "GRU," "City of Gainesville," and similar terms will be deemed to refer to the CITY; provided, however, that in performing the services referenced herein CONTRACTOR will comply with the City of Gainesville's living wage ordinance as if the ordinance were adopted by the CITY.

(b) All references to "Supplier," "Vendor," "Contractor," and similar terms in the GRU Contract will be deemed to refer to CONTRACTOR.

(c) All references to "Alachua County" and similar terms will be deemed to refer to Volusia County, Florida.

(d) All references within the GRU Contract to specific names or titles of officers/departments/divisions, or to specific locations (such as for delivery of goods, receipt of CONTRACTOR invoicing, etc.), not specifically corrected in this Agreement, will be deemed to refer to the equivalent CITY officers/departments/divisions, and CITY locations, as hereafter designated by the CITY's Contract Representative as described below.

(e) CITY shall provide CONTRACTOR a copy of CITY's sales tax exempt certificate.

(f) CITY does not have a debarment/suspension requirement or procedure as referenced in the part of the GRU Contract titled "Debarment/Suspension/Termination." All references to debarment, suspension, or termination as referenced in said part of the GRU Contract are hereby waived. Such waiver does not alter or diminish CITY's right to suspend or terminate CONTRACTOR as provided below.

(g) The Ralph Brennan Water Treatment Facility, 3651 LPGA Blvd., Daytona Beach, FL, 32124, will be the site from which CONTRACTOR picks up the wet lime residuals. CONTRACTOR will have access to this location 24 hours a day / 7 days per week.

**5. Standard of Performance.** In addition to any standards of performance or warranties set forth in the GRU Contract, CONTRACTOR affirms that CONTRACTOR's services will at a minimum meet the level care and skill ordinarily used by members of CONTRACTOR's profession performing the type of services provided herein within the State of Florida.

**6. Public Records.**

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida's Public Records Law, ch. 119, Florida Statutes, which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Agreement, or, if this is a Contract for a specified Term, through the expiration of the Term; and following such completion or expiration, as applicable, if CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of the work, or, if this is a Contract for a specified Term, upon expiration of the Term, keep and maintain public records required by the CITY to perform the service. CONTRACTOR will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

**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 AGREEMENT, CONTRACTOR MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:**

(Phone)	386 671-8023
(Email)	clerk@codb.us
(Address)	301 S. Ridgewood Avenue Daytona Beach, FL 32114

(b) Nothing herein will be deemed to waive CONTRACTOR's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

## 7. Notices/Contract Representatives.

(a) All notices, requests, demands and other communications required under this Agreement will be in writing and deemed delivered if delivered in person, by telefax, by overnight courier or by certified or registered mail. Notices will be sent to the Parties' respective Contract Representatives as referenced below, except with regard to certain matters regarding insurance as specifically provided below.

(b) The Parties' initial Contract Representatives, and their addresses and fax numbers for purposes of notice, are as follows:

<p>If to CITY, to: Marvin Owens Plant Superintendent Daytona Beach Utilities Department Brennan Water Treatment Plant 3651 LPGA Boulevard Daytona Beach, FL 32124 Fax: (386) 671-5909</p>	<p>If to CONTRACTOR, to: The Kenan Advantage Group, Inc. Attn: EVP &amp; General Counsel 4366 Mt. Pleasant Street NW North Canton, OH 44720 Fax: (330) 409-1153</p>
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(c) Either Party may, by providing written notice to the other Party in the manner referenced above, designate a new person as that Party's Contract Representative, or provide for a change of address or fax number for the Party's Contract Representative.

**8. Termination.** Termination for convenience, for cause, and due to funding out, will be as provided in Sections 8 and 9 of Attachment 2 to the GRU Contract.

**9. Suspension of Services.** Whenever CONTRACTOR has defaulted or committed a material breach as referenced in Sections 8 or 9 of Attachment 2 to the GRU Contract, thereby giving CITY a right to terminate as provided in those provisions, in lieu of termination the CITY may temporarily suspend CONTRACTOR from further work (except for work required to correct a material breach), by providing CONTRACTOR written notice thereof. If CITY elects to suspend CONTRACTOR, upon receipt of CITY's notice, CONTRACTOR will immediately suspend service, other than the work required to remedy a material breach.

**10. Indemnification.** CONTRACTOR will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONTRACTOR, or CONTRACTOR's officers, employees, or agents, including subcontractors and other persons employed or used by CONTRACTOR in the performance of this Agreement. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this agreement or otherwise.

**11. Insurance.** CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the CITY's own insurance. In the event any request for the performance of services presents exposures to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure.

(a) *Coverage and Amounts.*

(1) **Workers Compensation Insurance** as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

(2) **Liability Insurance**, including (i) **Commercial general liability** coverage for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) Automobile Liability Insurance, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONTRACTOR in the performance of this Agreement.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$2,000,000. The Risk Manager may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED AS ITS INTERESTS MAY APPEAR. CONTRACTOR'S Commercial General Liability insurance policy shall provide coverage to CONTRACTOR, and CITY when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of CITY in CONTRACTOR's Care, Custody or Control or Property of CITY on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds). When CITY is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

Unless specifically waived hereafter in writing by the Risk Manager, CONTRACTOR agrees that the insurer shall waive its rights of subrogation, if any, against the CITY on each of the foregoing types of required insurance coverage.

(b) *Proof of Insurance.* CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Agreement. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, and the expiration dates.

If requested by the CITY, CONTRACTOR will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

(c) *Cancellation; Replacement Required.* CONTRACTOR will file replacement certificates 10 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. If a required policy is canceled without CONTRACTOR's prior knowledge CONTRACTOR will immediately notify the CITY upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The CITY expressly reserves the right to replace the canceled policy at CONTRACTOR's expense if CONTRACTOR fails to do so.

(d) *Termination of Insurance.* CONTRACTOR may not cancel the insurance required by this Agreement until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Management Division of the CITY that CONTRACTOR may cancel the insurance required by this Agreement and the date upon which the insurance may be canceled. The Risk Management Division of the CITY will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

(e) *Liabilities Unaffected.* CONTRACTOR's liabilities under this Agreement will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly,



CONTRACTOR's liabilities under this Agreement will not be limited to the extent of by the existence of any exclusions or limitations in insurance coverages, or by CONTRACTOR's failure to obtain insurance coverage.

CONTRACTOR will not be relieved from responsibility to provide required insurance by any failure of the CITY to demand such coverage, or by CITY's approval of a policy submitted by CONTRACTOR that does not meet the requirements of this Agreement.

**12. Disputes.** If a dispute exists concerning this Agreement, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

(a) *Negotiations.* A Party will request in writing that a meeting be held between representatives of each Party within 14 Calendar Days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

(b) *Non-Binding Mediation.* Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described above proves unsuccessful or the Parties mutually waive the procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

**13. Additional Provisions.** The following additional provisions apply:

(a) CONTRACTOR will comply with the terms and conditions of any and all federal, state and local permits, which may be required for the work to be performed. The CITY will be responsible for obtaining all other permits at the CITY's cost.

(b) CONTRACTOR will not assign, transfer, delegate or in any other manner dispose of its rights, privileges or obligations under this Agreement, without the written consent of the CITY.

(c) This Agreement will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Agreement and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Agreement. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Agreement; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

(d) The exclusive venue for any litigation arising out of this Agreement will be in Volusia County, Florida, if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

(e) JURY TRIAL WAIVED. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

(f) Except where specifically provided herein, in case of litigation between the Parties concerning this Agreement, each party will bear all of its litigation costs, including attorney's fees.

(g) A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Agreement imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

(h) This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements, or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

(i) Any future request for price increase, other than fuel surcharges as described on the pricing sheet, will be submitted with justification and approved or denied by the City Manager. The City Manager's decision to accept or deny price increase will be independent from that of Gainesville Regional Utilities.

(j) Weights for billing purposes will be determined by the CITY's scales located at LPGA Ralph Brennan Water Plant, 3651 LPGA Blvd., Daytona Beach, FL 32124 and not the Gainesville Utilities Commission or any other scales.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as below.

**THE CITY**

**CONTRACTOR**

By: \_\_\_\_\_  
Derrick L. Henry, Mayor

By: John Rakoczy HM  
Printed Name: John Rakoczy

Attest: \_\_\_\_\_  
Letitia LaMagna, City Clerk

Title: EVP

Date: \_\_\_\_\_

Date: 4-5-19

Approved as to legal form:

By: \_\_\_\_\_  
Robert Jagger, City Attorney

**EXHIBIT A: GRU CONTRACT**

**CONTRACT BETWEEN THE CITY OF GAINESVILLE, d/b/a  
GAINESVILLE REGIONAL UTILITIES, AND DEDICATED TRANSPORT, LLC**

**FOR**

**HAULING OF LIME SLURRY**

**THIS CONTRACT** is made and entered into with an effective date of October 3<sup>rd</sup>, 2018, by and between the **CITY OF GAINESVILLE**, a Florida municipal corporation d/b/a **GAINESVILLE REGIONAL UTILITIES** ("GRU"), with offices located at 301 S.E. 4<sup>th</sup> Avenue, Gainesville, Florida 32601 and **DEDICATED TRANSPORT, LLC** ("CONTRACTOR"), a foreign limited liability company authorized to do business in Florida, with a principle address at 4366 Mt. Pleasant St., NW, North Canton, OH 44720, individually referred to as "Party" or collectively as "Parties", respectively.

**WHEREAS**, GRU requires the lime residual hauling services continuously throughout the year; and

**WHEREAS**, This is a specified source because Dedicated Transport, LLC is the only hauling service that may haul to the OUC Stanton Energy Center where lime slurry is delivered; and

**WHEREAS**, DEDICATED TRANSPORT, LLC submitted pricing dated July 25, 2018, for lime residual hauling services to OUC; and

**WHEREAS**, GRU desires to enter into a Contract for the provision of lime residual hauling services as described herein;

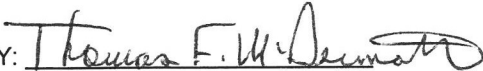
**NOW, THEREFORE**, in consideration of the covenants contained herein, the Parties agree to the following:

- 1.0 CONTRACTOR shall haul lime residual on an as needed basis in accordance with this Contract.
- 2.0 GRU shall pay to CONTRACTOR for the faithful performance of this Contract as indicated on the Pricing Response Form attached hereto and incorporated by reference.
- 3.0 Refer to Schedule F for pricing.
- 4.0 Adjustments to price may be requested by the CONTRACTOR at least sixty (60) calendar days prior to the anniversary date of this Contract each year. Any negotiated price changes shall become effective on the anniversary date of that calendar year. CONTRACTOR shall provide documentation for any such price increase and the price increase shall not exceed the Consumer's Price Index (CPI) or the Producer's Price Index (PPI) for the product during the previous twelve calendar months as published by the U.S. Department of Labor, Bureau of Labor Statistics.
- 5.0 TERM OF AGREEMENT.
  - 4.1. The term of this Contract shall be five years, commencing on October 1, 2018 and terminating on September 30, 2023.
  - 4.3. This Contract may be extended for an additional six (6) months to allow for completion of a new agreement between the Parties.

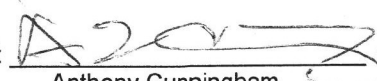
CONTRACT # 2018-093  
HAULING OF LIME SLURRY

**IN WITNESS WHEREOF**, the Parties hereto have executed this Contract on the date first above written in two (2) counterparts, each of which shall without proof or accounting for the other counterparts be deemed an original contract.

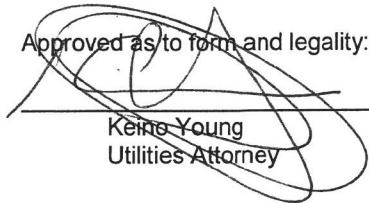
**DEDICATED TRANSPORT, LLC**

BY:   
Thomas F. McDermott  
President & CEO

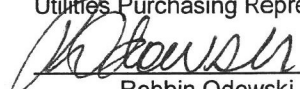
**CITY OF GAINESVILLE d/b/a  
GAINESVILLE REGIONAL UTILITIES**

BY:  ce/2e/10  
Anthony Cunningham  
Water/Wastewater Officer

Approved as to form and legality:

  
Keino Young  
Utilities Attorney

Utilities Purchasing Representative:

  
Robbin Odowski  
Buyer Analyst

**ATTACHMENTS:**

- Attachment 1: General Terms and Conditions
- Attachment 2: Supplemental Terms and Conditions
- Attachment 3: Technical Specifications/Scope of Work
- Attachment 4: Pricing Response Form