

**GENERAL SERVICES CONTRACT  
CONTRACT NO. 0118-0540**

**THE PARTIES TO THIS CONTRACT** are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and Momar Inc., a foreign profit corporation authorized to do business in the State of Florida ("CONTRACTOR").

In consideration of the mutual covenants herein contained, the Parties agree as follows:

**Section 1. Scope of Services.** CONTRACTOR will provide and deliver Supplemental Carbon (the "Product") to the CITY from time to time at the request of the CITY during the Term of this Contract.

**Exhibit A**, attached hereto and incorporated herein by reference, provides a detailed description of the conditions that CONTRACTOR must meet in providing this service, including requirements intended to ensure that the Product consistently meets the specifications referenced therein, and that CONTRACTOR consistently supplies the Product within the timeframes required. **Exhibit A** also defines certain terms used in this Contract.

**Section 2. Reserved**

**Section 3. Compensation; Adjustments to Compensation.**

(a) **Delivery Fee.** The CITY will pay CONTRACTOR a Delivery Fee upon CONTRACTOR's delivery and CITY's acceptance of the Product. The Delivery Fee will be based on the amount of Product delivered, and will be paid at a Rate of \$0.147 per pound of COD (as determined by the Stage 2 COA referenced in **Exhibit A**) contained within the Product delivered, subject to the adjustments provided below.

(b) **Adjustments to Delivery Fee.** If, after CITY paid the Delivery Fee it is determined that the delivered Product had a COD Deficit (as defined in **Exhibit A**), the CITY be entitled to a credit against future Delivery Fees owed to reflect the amount that should have been billed for the delivered Product.

(c) **Sole Compensation.** The Delivery Fee, as adjusted, is CONTRACTOR's sole compensation for the services provided herein. CONTRACTOR will be solely responsible for all costs that CONTRACTOR incurs in performing the Services herein.

**Section 4. Billing; Manner of Payment.** In addition to requirements for payment established by applicable federal, state, or local law including the City Code, payment terms are as follows:

(a) No payment will be due for services performed until CONTRACTOR submits a proper invoice. CONTRACTOR will submit invoices monthly. Billing will be based on the quantity of COD shown on the Stage 2 COA as referenced in **Exhibit A**.

(b) In order to be considered proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due based on the specific requirements of this Contract. This includes, where applicable, deductions based on the COD Deficit referenced above.

(c) The CITY will within 30 days after receipt of an invoice notify the CONTRACTOR that the invoice is deficient, or pay CONTRACTOR the amount due. If the invoice is improper CONTRACTOR will promptly submit a revised invoice addressing the defects.

(d) Interest on payments not made when due, will be at the rates set forth in Florida Statutes § 281.74(4), subject to CONTRACTOR's compliance with the requirements therein.

**Section 5. Standard of Performance.** 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 for municipally-owned biological nutrient reduction wastewater treatment facilities.

**Section 6. Relationship between Parties.** This Contract does not create an employee-employer relationship between the CITY and CONTRACTOR. CONTRACTOR is an independent contractor of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent contractor, CONTRACTOR will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and CONTRACTOR agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes. CONTRACTOR will also be responsible for the performance of CONTRACTOR's subcontractors.

**Section 7. Books and Records.** CONTRACTOR will keep and maintain customary books and records related to the services provided herein, including books and records of CONTRACTOR's subcontractors, in accordance with generally accepted accounting principles. These books and records will also include records of Quality Control Measures required herein, such as testing procedures and lab samples on both Source Materials and Product. If such books and records are kept electronically they will be readily capable of conversion into an electronic or written form accessible to the CITY, CONTRACTOR will continue to keep and maintain these books and records for a period of three years after the termination or expiration of this Contract; provided, however, that any such books and records which relate to any litigation, appeals, or settlements of claims arising from performance of this Contract will also be kept and maintained until a final disposition has been made of such litigation, appeals or claims. CONTRACTOR will provide the CITY, or the CITY's officers, employees, or agents, access to such records free of charge upon reasonable notice while this Contract is in effect and during the additional periods described above. CONTRACTOR's obligations under this Section 7 are separate and apart from CONTRACTOR's obligations (if any) relating to public records under Section 8. Nothing in this Section 7 entitles the CITY to access CONTRACTOR's physical facilities, except as necessary to access CONTRACTOR's books and records.

**Section 8. Public Records.**

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida Statutes § 119.0701, 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 Contract, and following such completion if CONTRACTOR fails to transfer such records to the CITY.
- (4) Upon completion of this Contract, 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.

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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, 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 Florida Statutes § 119.0701(3)(a).

**Section 9. Effective Date and Term.** The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is 1 year, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to 3 Terms of 1 year each, by providing CONTRACTOR written notice. The CITY's notice of renewal must be provided to CONTRACTOR at least 60 days before the end of the current Term, unless waived by CONTRACTOR.

**Section 10. Termination of Contract.**

(a) The CITY may by written notice to CONTRACTOR terminate this Contract, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONTRACTOR to fulfill its contractual obligations

(1) Before terminating for convenience, CITY must provide CONTRACTOR at least 30 day's advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period

(2) Except as provided in Section 10(a)(3), before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding CONTRACTOR remedy the breach within 10 days of the notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if CONTRACTOR fails to remedy the material breach within the period described in the CITY's notice of breach.

(3) The CITY may terminate this Contract upon CONTRACTOR's breach without providing CONTRACTOR an opportunity to remedy a material breach as referenced immediately above, if: (i) In connection with the services or rights provided herein, CONTRACTOR, or CONTRACTOR's subcontractors, engage in willful or unlawful behavior, or act in a manner that is reckless or negligent manner, in the CITY's view such actions pose an imminent, material risk of injury to persons, damage to property, a threat to public health, safety, or welfare; or (ii) Delivered Product repeatedly fails to meet Optimal COD Value as more specifically referenced in **Exhibit A**. Such termination will be effective immediately upon providing CONTRACTOR written notice.

(b) If the termination is for convenience, CONTRACTOR will be paid compensation for authorized services performed to the date of termination. If termination is due to CONTRACTOR's material breach, the CITY reserves all rights and remedies it may have under law due to such breach. Among other things, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case the CONTRACTOR will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby

(c) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations it is judicially determined by a court of law that the CONTRACTOR had not so failed, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR will be made as provided in Section 10(b) for a termination for convenience.

(d) The rights and remedies of CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

**Section 11. Suspension of Services.** The CITY may suspend CONTRACTOR's services if the notice of material breach provided pursuant to Section 10(a)(2) provides/requires such suspension. The CITY may also suspend CONTRACTOR's services in lieu of termination, under the conditions set forth in Section 10(a)(3), by providing CONTRACTOR a written notice of suspension. CONTRACTOR will suspend activities immediately upon receipt thereof; and in such instance CONTRACTOR's rights to provide services referenced herein will also automatically be suspended for the period of such suspension.

**Section 12. 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 Contract. This indemnification agreement is separate and apart from and in no way limited by any insurance provided pursuant to this Contract or otherwise.

**Section 13. 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. If CONTRACTOR wishes to claim an exemption from worker's compensation insurance requirements, CONTRACTOR will notify the Risk Manager in writing on CONTRACTOR's official letterhead.

(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 Contract. 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 CITY's 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. The Commercial General Liability insurance policy will also 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 the 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 will 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 Contract. 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 30 days prior to expiration or cancellation of the required insurance, except for insurance canceled without CONTRACTOR's prior knowledge. If a required policy is canceled without CONTRACTOR's prior knowledge CONTRACTOR will notify the CITY immediately 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) **Liabilities Unaffected.** CONTRACTOR's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONTRACTOR's liabilities under this Contract will not be limited to the extent of 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 Contract.

**Section 14. Representations and Warranties.** As an inducement to the CITY to enter into this Contract, CONTRACTOR represents and warrants each of the following:

(a) **Product Warranty.** CONTRACTOR warrants that the Product will be new, of good quality, and conform to any specifications and requirements of this Contract; that the Product is merchantable; and that the Product is fit for the ordinary purposes it is intended to serve.

(b) **Patent Infringement.** CONTRACTOR warrants that the Product does not infringe on any valid patent, copyright, or trademark, and that CONTRACTOR will at CONTRACTOR's sole cost, defend any and all actions or suits charging such infringement.

(c) **Consistent and Timely Supply of Product.** CONTRACTOR will maintain a consistent uninterrupted, and timely supply of Product, including during Force Majeure Events as defined in Section 20(k). In order to provide CITY further assurance that this requirement will be met, CONTRACTOR affirms that:

(1) CONTRACTOR has, and will maintain, redundancy in the Product's supply chain, including by maintaining contracts with multiple refineries and multiple transport companies and ownership or control of multiple Mixing Facilities and Storage Facilities. The locations of these refineries, the transport vehicles, Mixing Facilities, and Storage Facilities, will be strategically located so as to allow CONTRACTOR to mitigate impacts that may otherwise be caused by Force Majeure events of a regional scale, on CONTRACTOR's ability to meet its obligations; and

(2) CONTRACTOR will maintain at the Local Storage Facilities, a Product inventory sufficient to enable CONTRACTOR to continue supplying CITY required Product for a 30-day period in spite of hurricanes or other Force Majeure events,

(d) **Quality Control Measures.** CONTRACTOR has in place, and will continue to follow, certain measures intended to avoid cross contamination and ensure that the delivered Product meets the Product Specifications referenced in Exhibit A. Such measures include (i) Use of lab facilities and capabilities specifically referenced in the CONTRACTOR's Reply to the RFP; (ii) Filtering of all Source Material to be converted into the Product at CONTRACTOR's Mixing Facilities, consistent with ASTM E11-09e1, (iii) Establishment and compliance with a quality management system that complies with ANSI/ISO/ASQ Q9001-2008 and the GLP; and (iv) Ensuring that all personnel and all equipment and facilities used by CONTRACTOR, or CONTRACTOR's subcontractors, at every stage of transport, production, storage, and delivery of the Product, comply with this quality management system.

(e) **CITY Inspection.** The CITY, including CITY's officers, employees, and agents, will have the right to inspect all lab, Mixing, and Storage Facilities used by CONTRACTOR to supply the required Product upon reasonable notice during normal business hours in order to verify that these requirements are met.

**Section 15. Notice.** Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, transmitted to a receiving fax machine followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

**If to CITY:**

Christopher J. Wall  
Manager, Treatment Operations  
The City of Daytona Beach  
3651 LPGA Blvd.  
Daytona Beach, FL 32114  
Fax: 386-671-5904

**If to CONTRACTOR:**

Julian B. Mohr, Jr.  
Chief Executive Officer  
Mormar, Inc.  
1830 Ellsworth Industrial Drive, N.W  
Atlanta, GA 30318  
Fax: 404-350-6079

Provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party

**Section 16. Personnel.** CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense, all personnel required in performing the services under this Contract Such personnel will not be employees of or have any contractual relationship with the CITY.

All personnel engaged in the services provided by CONTRACTOR, will be fully qualified and will be authorized under state and local law to perform such services.

**Section 17. CITY's Responsibilities.** The CITY agrees to make available for review and use by the CONTRACTOR, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONTRACTOR to facilitate coordination and ensure expeditious review of work product.

**Section 18. Limitation on Waivers.** Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, will be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR's negligent or wrongful provision of any of the services furnished under this Contract.

Failure of the CITY to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the CITY at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the

CITY's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.

**Section 19. Dispute Resolution.** If a dispute exists concerning this Contract, 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 in Subsection (a) proves unsuccessful or the Parties mutually waive the subsection (a) 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 Contract 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.

**Section 20. General Terms and Conditions.**

(a) **Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in writing and signed by both Parties

(b) **Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the CITY's written approval.

(c) **Compliance with Laws and Regulations** In providing all services pursuant to this Contract, CONTRACTOR will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the CITY to terminate this Contract immediately upon delivery of written notice of termination to the CONTRACTOR.

(d) **Truth in Negotiations Certificate.** CONTRACTOR hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current to the best of CONTRACTOR's knowledge at the time of this Contract.

(e) **No Third-Party Beneficiaries.** There are no third-party beneficiaries of CONTRACTOR's services under this Contract.

(f) **Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.



(g) **Nondiscrimination.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, CONTRACTOR agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONTRACTOR agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

(h) **Principles in Construing Contract.** This Contract 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 Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. 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 Contract; 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.

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

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

(k) **Force Majeure Events.** 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 Contract 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. However, CONTRACTOR acknowledges and agrees that, for the reasons referenced in Section 14(c), a Force Majeure Event will not generally be deemed to excuse CONTRACTOR from delivering Product within the Delivery Deadline referenced in Exhibit A, unless the Event extends beyond 30 days.

(l) **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 CONTRACT. 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.

(m) **Authority to Bind CONTRACTOR.** The undersigned representative of CONTRACTOR represents and warrants that he or she is fully authorized to bind CONTRACTOR to the terms and conditions of this Contract.

(n) **Incorporation of RFP and Proposal.** The CITY's Request for Proposals ("RFP") 0118-0540, and the CONTRACTOR'S responsive proposal are incorporated herein by reference as **Composite Exhibit B**. **Composite Exhibit B** is not attached, but will remain on file with the CITY's Purchasing Agent and made available upon request made to the City Clerk. In case of conflicts between the RFP and Proposal, the RFP will govern. In case of conflicts between **Composite Exhibit B** and other provisions of this Contract, including **Exhibit A**, this Contract will govern. In case of conflicts between the Exhibits, **Exhibit A** will govern.





(o) **Integration.** This Contract 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.

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original.

**THE CITY**

**CONTRACTOR**

By:   
Derrick L. Henry, Mayor

By: 

Printed Name: Julian B. Mohe, JR.

Title: Chief Executive Officer

Date: 7-19-18

Date: 6/21/18

Attest:   
Letitia LaMagna, City Clerk

Approved as to legal form:

By:   
Robert Jagger, City Attorney

## EXHIBIT A: SUPPLEMENTAL CARBON SOURCE SCOPE OF SERVICES

I. **Intent; General Scope.** CITY requires a steady and consistent supply of supplemental carbon for the operation of the Treatment Facilities described herein in a manner that ensures continuous operation of the Treatment Facilities in compliance with all applicable legal requirements. CITY also requires the Product in order to meet stringent effluent quality requirements, and avoid risk of injuries to persons or damage to the Treatment Plants.

CONTRACTOR acknowledges these requirements, and therefore agrees to supply all of the CITY's required supply of Product in strict accordance with the requirements referenced below.

II. **Definitions.** As used in this Contract certain words will have the meanings ascribed below, except where the context clearly dictates otherwise. Other words not defined herein will have their commonly understood meanings.

- A. "Blending Facility" or "Manufacturing Facility" means the facility owned, operated by, or under contract with CONTRACTOR, where Source Material is blended/processed into the final, usable Product. The term does not include the source from which CONTRACTOR obtains Source Material, nor does it mean any Storage Facility. However, nothing herein will be deemed to prohibit the Blending Facility and Storage Facility from being at the same site.
- B. "Designated CITY Representative" means the CITY officer or employee who is designated to receive notices on CITY'S behalf as referenced in Section 15 of the Contract.
- C. "cPS" is the unit of measurement of viscosity.
- D. "COA" means a written Certificate of Analysis, certifying the chemical composition of Product, including with respect to all Parameters listed in **Table A**, below, which will be generated in accordance with the Quality Control Measures referenced in Section 14(d) of the Contract.
- E. "COD" means Chemical Oxygen Demand.
- F. "COD Deficit" means that the COD value of the Product, is less than the COD value of the Product as documented by the Stage 2 COA.
- G. "Good Laboratory Practices ('GLP')" means a quality system of management controls developed in accordance with standards promulgated by the OECD for research laboratories and organizations to ensure the uniformity, consistency, reliability, reproducibility, quality, and integrity of chemicals in the process of non-clinical and laboratory testing. GLP includes testing of chemicals in accordance with the OECD Guidelines for the Testing of Chemicals,
- H. "Local Storage Facilities" means the locations where CONTRACTOR stores the finished Product before delivering the Product to the CITY. The term includes all Storage Facilities within sufficient proximity to the CITY to allow CONTRACTOR to deliver Product within the deadlines required by this Contract.
- I. "mgd" means million gallons per day.
- J. "mg/L" means milligrams per liter.
- K. "MONG" means Materials Organic Not Glycerin.
- L. "OECD" means the Organization for Economic Co-operation and Development.
- M. "Optimal COD Value" means a COD level of at least 1,000,000 mg/L.

- N. "Minimum COD Value" means a COD level of at least 800,000 mg/L.
- O. "Source Material" mean the glycerin-based material that CONTRACTOR obtains from third party sources, such as biodiesel or other types of manufacturing plants, which CONTRACTOR converts into the Product at the Mixing Facilities.
- P. "Toxicity" means the quality, relative degree, or specific degree of being toxic or poisonous.
- Q. "Treatment Facilities" means the following wastewater treatment facilities owned and operated by CITY: the Bethune Point Wastewater Treatment Plant, located at 1 Shady Place, Daytona Beach, Florida 32114; and the Regional Wastewater Treatment Plant, located at 3651 LPGA Boulevard, Daytona Beach, Florida 32124
- R. "w/w" means weight to weight (i.e. 1 pound to 100 pounds) i.e., the ratio of methanol to Supplemental Carbon

III. **Product Specifications.** Except as specifically provided in this Contract, the Product will meet the Product Specifications contained in **Table A:**

Parameter	Requirement
Specific Gravity @20° C	Range of 1.15 – 1.30
pH	Range of 4.0-11.0
Purity % Glycerin (remainder as water and minor constituents)	≤ 70%
Viscosity cPS @ 20° C @ 5° C	< 200 <800
Appearance	Transparent liquid
Solubility in water	Minimum 99%
Freezing Point	Below Zero Fahrenheit
Flash Point	No flash below 93° C
Optimal COD Value	≥ 1,000,000 mg/L
Minimum COD Value	800,000 mg/L
Toxicity	None
Methanol Content	< 1.0 % w/w
Fatty Acid Content	≤ 1.0%
MONG layer	No MONG layer should be visible at the time of delivery
Insoluble/Nuisance Solids	Product will not contain solids larger than 50 microns
Product will not consist solely of crude glycerin	

IV. **Product Testing.**

- A. **Performance of Testing.** CONTRACTOR will provide for testing of representative samples of the Product in accordance with the Quality Control Measures, to ensure that the Product fully meets the Product Specifications above. Such testing will include, at a minimum Stage 1 and Stage 2 Tests as follows:
1. *Stage 1 Tests* will be performed on a sampling of Product taken after it has been converted from Source Material at the Mixing Facility, and prior to the transfer of Product to the Storage Facilities.
  2. *Stage 2 Tests* will be performed on a sampling of the Product taken from the Storage Facilities immediately before the Product is loaded in tanker trucks for delivery to the CITY.
- B. **Certificates of Analysis (COAs).** CONTRACTOR will authenticate the results of the Stage 1 and Stage 2 Tests via separate COAs. CONTRACTOR will deliver the Stage 1 Test COA to the CITY at the time of Product delivery. If the Stage 2 Test COA is available at the time of Product delivery, CONTRACTOR will also provide the Stage 2 Test COA at that time. If the Stage 2 Test COA is unavailable at the time of Product delivery, CONTRACTOR will deliver the Stage 2 Test COA via email to the Designated CITY Representative, to the email address provided by the designated CITY Representative to CONTRACTOR for that purpose; or to such other email address as the CITY may require by written notice to CONTRACTOR.

V. **Product Ordering and Delivery.**

- A. **Ordering.** The CITY will place orders for the supply of the Product in full tanker loads by email. The Designated CITY Representative or designee is authorized to place these orders on the CITY's behalf. As of the Effective Date, the Designated CITY Representative has designated any CITY Lead Operator or Superintendent as being authorized to place such orders. The Designated CITY Representative may hereafter notify CONTRACTOR via written email notice of any changes to the persons authorized to place such orders.

The CITY will not be obligated to accept or pay for any Product that CONTRACTOR attempts to deliver without CONTRACTOR first receiving an order from the CITY as referenced herein.

- B. **Delivery.** CONTRACTOR will deliver the Product in accordance with the following requirements:
1. *Full Tanker Load.* The Product will be delivered via full tanker load, sufficient to fill the storage tanks at the Treatment Facility.
  2. *Delivery Deadline.* Delivery will be made within 48 hours after the CITY's order is placed; provided, however, that unless specified otherwise in writing in the CITY's order, the delivery time will be extended as needed if the deadline will fall on a Saturday, Sunday, or CITY holiday. CITY-recognized holidays are:
    - New Year's Day
    - Martin Luther King Jr. Day
    - Memorial Day
    - Independence Day
    - Labor Day
    - Thanksgiving Day
    - Day after Thanksgiving Day
    - Christmas Eve
    - Christmas Day
  3. *Delivery Hours and Dates.* The Product will be delivered between the hours of 8:00 a.m. and 2:00 p.m. Monday — Friday, unless a CITY officer or employee having authority to place orders as

referenced in Paragraph V.A. of this **Exhibit A**, approves a different delivery time via email *in writing prior to delivery.*

4. *COA Required.* At the time of Product delivery, CONTRACTOR will provide the COA for the Stage 1 Test and, if available, the COA for the Stage 2 Test.

**C. Rejection/Acceptance of Product.**

1. *CITY Right to Inspect.* At the time of Product delivery, the CITY will have the right to review *the* COA(s) provided and to visually inspect the Product for issues such as transparency, pH, specific gravity, presence of MONG layer or Insoluble/Nuisance Solids, or other indications that the Product Specifications are not met. In addition, the CITY may take its own sample of the Product from the tanker truck for purposes of performing its own testing of the Product after delivery. Samples taken will remain the property of the CITY.
2. *CITY Rejection.* The CITY will be authorized to reject delivery of the Product if any of the following apply: (i) the CITY did not order the Product in the manner provided above; (ii) CONTRACTOR provides less than a full tanker load of Product for delivery; (iii) delivery is not made within the Delivery Deadline or during the Delivery Dates and Hours referenced above; (iv) Required COA(s) are not provided or do not comply with the requirements above; (v) the CITY reasonably determines that the Product may have been cross-contaminated; or (vi) the CITY reasonably determines that the Product fails to meet any of the Product Specifications referenced in **Table A**. CITY will be deemed to have rejected the Product if delivery is attempted outside of the Delivery Hours and Dates referenced above and as a result, there is no CITY representative at the Treatment Facility authorized to accept it.

It will not be a basis for CITY to reject Product, merely because the Stage 1 and Stage 2 COAs for the Product have minor inconsistencies; provided that the Stage 2 COA shows the Product meets all Product Specifications

3. *Failure of Product to Meet Optimal COD Value.* If the Product fails to meet *the* Optimal COD Value, CITY will have the right but not the obligation to accept it. However, if CONTRACTOR delivers or attempts to deliver Product that fails to meet the Optimal COD Value on 3 or more occasions in a row or any 3 occasions in any 6-month period, the failure of the Product to meet the Optimal COD Value on these occasions will be a material breach and grounds for immediate termination for cause as referenced in Section 10(a)(3) of the Contract, regardless of whether the CITY accepted the Product on such occasions.

Nothing in this Paragraph V.C.3 will be deemed alter, diminish, or waive the CITY's rights of termination or suspension under Section 10(a) of the Contract, where CONTRACTOR's material breaches consists of something other than the repeated failure of the Product to meet Optimal COD Value as specified herein.

4. *Completion of Delivery.* Upon verification that the Product is acceptable to the CITY, CONTRACTOR will be responsible for pumping the Product into the Treatment Facility storage tanks used to store the Product. CONTRACTOR will be required to use due care and will be responsible for any on-site cleaning required due to spilled Product.
5. *Title and Risk of Loss.* Title of and risk of loss to the Product will not pass from CONTRACTOR to CITY unless and until CITY accepts the Product and CONTRACTOR has completed delivery as provided below.

- D. Replacement of Defective Product by CONTRACTOR.** If CITY *rejects* the Product during delivery because it is defective; or if, after CITY has accepted the Product, it is determined that the Product does not meet Product Specifications (such as where a Stage 2 COA or the CITY's own testing of the Product after delivery reveals that the Product Specifications were not met). CITY will provide notice to CONTRACTOR in the same manner as the CITY orders Product above. If CITY so requests in

such notice, CONTRACTOR will replace the rejected/defective Product at no additional charge. Replacement will be completed within the parameters for delivery above, including Delivery Deadline.

- E. **Replacement of Defective/Undelivered Product from Other Sources.** In lieu of obtaining replacement of Defective Product from CONTRACTOR as referenced above; or, alternatively, upon CONTRACTOR's failure to deliver Product within the Delivery Deadline after CITY has placed an order, CITY may purchase replacement product meeting or substantially meeting the Product Specifications herein on the open market; and in such instance CONTRACTOR will be liable for the increase, if any, in the cost CITY is obligated to pay on the open market and the Delivery Fee that CITY would have been obligated to pay CONTRACTOR had CONTRACTOR met its obligations.



***Composite Exhibit B is not attached. It will be kept on file with the Purchasing Agent and made available upon request made to the City Clerk.***

A handwritten signature or mark, possibly initials, located in the bottom right corner of the page.