

New Smyrna Beach Utilities

ITB# 18-23
HAULING OF WET LIME RESIDUALS

INVITATION TO BID

New Smyrna Beach Utilities is seeking bids from qualified vendors to:
ANNUAL CONTRACT FOR THE REMOVAL OF WET LIME RESIDUALS

**Notice is hereby given that sealed proposals will be ACCEPTED ELECTRONICALLY VIA
VENDOR LINK, until August 29, 2023 AT 2:30PM**
<https://www.myvendorlink.com/external/bids?a=358>

**They will be publicly opened in the Deberry Room at 200 Canal Street, New Smyrna Beach,
FL 32168 August 29, 2023 AT 3:00PM.**

**WE ARE ALSO OFFERING A REMOTE CALL-IN FOR LISTENING TO THE
BID**

OPENING.

**YOU CAN ATTEND BY DIALING (872) 216-5903
CONFERENCE ID: 851 828 185#**

Submit Bids To: Maureen Lynch, CPPB
Procurement Manager
New Smyrna Beach
Utilities
(386) 424.3046 Voice
(386) 424.3147 Fax
MLYNCH@NSBUFL.COM

Mailing Address: 200 Canal Street
New Smyrna Beach, FL
32168

Walk In Delivery: 200 Canal Street
New Smyrna Beach, FL
32168

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BID SCHEDULE

August 2, 2023	DISTRIBUTION OF THE INVITATION TO BID
August 15, 2023	DEADLINE FOR FINAL QUESTIONS BY 2:30 P.M. E-MAIL: MLYNCH@NSBUFL.COM or submit through Vendorlink https://www.myvendorlink.com/external/bids?a=358
August 21, 2023	ADDENDUM PUBLISHED BY 5:00 P.M.
August 29, 2023	BID RETURN DEADLINE BY 2:30 P.M. LOCATION: ELECTRONICALLY VIA VENDORLINK https://www.myvendorlink.com/external/bids?a=358
August 29, 2023	BID OPENING 3:00 P.M. LOCATION: NEW SMYRNA BEACH UTILITIES CENTRAL OFFICE BUILDING 200 CANAL STREET NEW SMYRNA BEACH, FL 32168 3rd Floor DeBerry Room VENDORS MAY ATTEND IN BY DIALING 1 (872) 216-5903 PIN: 851 828 185#

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GENERAL TERMS AND CONDITIONS

1. **INSTRUCTIONS TO BIDDERS:** To ensure consideration of your bid, please follow these instructions. Bids not in compliance with conditions specified herein are subject to rejection.
2. **SEALED BID:** An electronic proposal must be submitted through VendorLink by the date and time specified.
3. **PREPARATION OF BID:** All information shall be entered in ink, typewritten, or produced by computer. It is your responsibility to make certain that unit prices and extended prices are correct. The NEW SMYRNA BEACH UTILITIES will not be responsible for errors or omissions made by the bidder in determining bid price(s). The bid must contain a manual signature of an authorized representative of the agency bidding. In order to ensure uniformity, bids must be submitted on this Bid Form and the attached pages.
4. **OBLIGATION OF BIDDER:** By submitting a BID, the bidder covenants and agrees that they have satisfied themselves from their own investigation of the conditions to be met, that they fully understand their obligation and that they will not make any claim for or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
5. **BID EXAMINATION:** **BIDDERS** are expected to examine, when applicable, the drawings, specifications, delivery requirements, performance sites and all instructions to satisfy themselves of conditions affecting cost of performing this contract.
6. **FURNISHED ITEMS:** No material, labor or facilities will be furnished by the **NEW SMYRNA BEACH UTILITIES** unless specifically stated.
7. **COLLUSION:** The **BIDDER** hereby attests that the prices in this offer have been arrived at independently without consultation, communication, or agreement with any competitor for the purpose of restricting competition.
8. **PRICE WARRANTY:** The **BIDDER** warrants that the prices of the items set forth herein do not exceed the prices charged by the **BIDDER** under a contract with the State of Florida.
9. **COMMERCIAL WARRANTY:** The **BIDDER** agrees that the supplies and services furnished under this award shall be covered by the most favorable commercial warranties the **BIDDER** gives any customers for comparable quantities of such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the **NEW SMYRNA BEACH UTILITIES** by any other provision of this award.

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10. **INSPECTION AND ACCEPTANCE:** A duly authorized representative of the **UTILITIES** will accomplish inspection and acceptance of the supplies/services purchased herein at the designated delivery point.
11. **QUESTIONS REGARDING BID:** **NEW SMYRNA BEACH UTILITIES** has made every effort to provide prospective vendors with the information needed to appropriately respond to this bid. **NEW SMYRNA BEACH UTILITIES** realizes that some clarification, interpretation, or additional information may be required.

Questions regarding any portion of this bid shall be directed, in writing, to:
NEW SMYRNA BEACH UTILITIES Maureen Lynch, Procurement Manager
MLYNCH@NSBUFL.COM

All such requests must be received no later than 2:30 PM, Eastern Standard Time, **August 15, 2023**. Responses to all requests for more information will be included in any addenda and will be made available to all **BIDDERS** on **August 21, 2023**

Requests for additional information received after the **August 15, 2023**, deadline will not receive a response. Responses will **not** be made orally.

Any additional information pertaining to this Bid or to the services being sought hereunder obtained in a manner other than as described in the preceding paragraph should be regarded as unofficial. **NEW SMYRNA BEACH UTILITIES** will not be bound in any way by information so obtained, or by a Bidder's reliance thereon.

12. **COMMUNICATIONS:** Any communication between any potential vendor, service provider, bidder, lobbyist or consultant and any **NEW SMYRNA BEACH UTILITIES** Member, staff member, or consultant of the **NEW SMYRNA BEACH UTILITIES** regarding this procurement is strictly prohibited from the date on which the solicitation advertisement appears on the **NEW SMYRNA BEACH UTILITIES** website, Demandstar, or newspaper through the date of contract award. Also, from the date of the filing of any notice of protest of award through resolution for the parties involved in the protest or contract award, whichever is longer. The only exceptions to this are communications with the **NEW SMYRNA BEACH UTILITIES** Material Manager or the **NEW SMYRNA BEACH UTILITIES** designated point of contact. Any violation shall constitute grounds for immediate and permanent disqualification of the offending firm and possible debarment or suspension. At the **NEW SMYRNA BEACH UTILITIES** General Manager/CEO and Director of Finance (CFO)'s sole discretion, it may also serve as grounds for the voiding of any Contract with the violator and/or to temporarily or permanently debarring the violator from future work with the **NEW SMYRNA BEACH UTILITIES**. This process will safeguard the integrity of the **NEW SMYRNA BEACH UTILITIES** procurement and protest process and also provide an ethical, equitable, and transparent procurement process.

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13. **NON DISCLOSURE:** The New Smyrna Beach Utilities understands the vendors concerns regarding confidential and/or proprietary information for both participating parties. In response NEW SMYRNA BEACH UTILITIES is incorporating the following verbiage into **ITB 18-23 HAULING OF WET LIME RESIDUALS**. Upon receipt by NEW SMYRNA BEACH UTILITIES, responses to solicitations become public records subject to the provisions of Florida's state policy on public records, Section 119 Florida Statutes. If you believe that any portion of your response is exempt you should clearly identify the specific documents for which confidentiality is claimed and provide specific legal authority of the asserted exemption.
14. **INVOICES:** All invoices resulting from the award of this bid will be paid within 30 days of receipt of invoice or receipt of goods or acceptance of work performed.
15. **E-VERIFY:** By [registering as a vendor, submitting a response to this solicitation, entering a Contract], you are obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Further, by your [registration as a vendor/response to this solicitation/entering into a contract] you affirm and represent that you are registered with the E-Verify system are using same, and will continue to use same as required by Section 448.095, F.S. Compliance with Section 448.095 includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination [as a vendor, disqualifying you for award of this solicitation, entering a contract and/or, cancellation of an active contract], or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by the Vendor/Contractor, the Vendor/Contractor may not be allowed to do business with The **NEW SMYRNA BEACH UTILITIES** or be awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Vendor/Contractor.
16. **BID FORM:** A Bid Form is provided, and a completed original and one duplicate copy shall be returned in a **sealed envelope properly marked with Bid number and acknowledgment of receipt of addenda where applicable**. It is incumbent upon each bidder to ensure that they have received all addenda before submitting their bid.
17. **BID OPENING:** Bids will be publicly opened, read aloud and recorded, on the date and time indicated, at the location specified in the request for bid. It is the **BIDDER's** sole responsibility to assure his/her bid is delivered at the proper time and place of the bid. The **NEW SMYRNA BEACH UTILITIES** will not be responsible for late deliveries or delayed mail. Bids delivered after the time specified shall not be considered; such bids shall remain **unopened**.

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18. **QUOTING PRICES:** Carelessness in quoting prices or in preparation of bid otherwise will not relieve the **BIDDER**. **BIDDERS** are expected to examine specifications, delivery schedule, extensions, and all terms and conditions in the bid documents. Bids having erasures or corrections must be initialed in ink by the **BIDDER**. In the event of an extension error(s), the unit price will prevail.
19. **AMENDED OR WITHDRAWN BIDS:** Bids may be amended or withdrawn only by written notice prior to the bid opening. Amendments will only be accepted in the form of a new bid package. The bidder must pick up the original bid package and submit an amended sealed bid prior to the bids closing date and time. Amendments or withdrawals received after the bid opening will not be effective, and the original bid submitted will be considered.
20. **PUBLIC ENTITY CRIMES:** UNDER SECTION 287.133(2)(a), FLORIDA STATUTES, 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, supplier, 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. See attachment "A".
21. **CONSIDERATION OF BIDS:** The **NEW SMYRNA BEACH UTILITIES** reserves the right to award the contract to the Bidder(s) that the **NEW SMYRNA BEACH UTILITIES** deem to offer the best overall bid. The **NEW SMYRNA BEACH UTILITIES** is therefore not bound to accept a bid based on lowest price. In addition, the **NEW SMYRNA BEACH UTILITIES** at its sole discretion, reserves the right to cancel this Bid, to reject any and all bids, to waive any and all informalities and/or irregularities, to re-advertise with either the identical or revised specifications, or not award a contract at all if it is deemed to be in the best interest of the **NEW SMYRNA BEACH UTILITIES** to do so. The **NEW SMYRNA BEACH UTILITIES** also reserve the right to make multiple or split awards if it is deemed to be in the **NEW SMYRNA BEACH UTILITIES'S** best interest. The **NEW SMYRNA BEACH UTILITIES** shall not be responsible for any cost or expense incurred by the Bidder in preparing or submitting a bid or any cost prior to the execution of a contract agreement.
22. **TIE BID:** In the event of a tie bid where quality and service are equal; a preference is given to vendors submitting, with the proposal, a certification of a drug free workplace in accordance with Section 287.087 Florida Statutes. Where tie bids are between bidders, one of which is located in Volusia County and the other bidder is not, the recommended award shall be to the local bidder. Past Performance-Consideration will be given to a vendor based on previous history and performance on similar Utilities **NEW SMYRNA BEACH UTILITIES** projects or requirements. Delivery availability or completion period. Capacity to perform in terms of service availability, facilities, personnel, or financial availability.

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Closeness to delivery point. If all conditions are equal, a flip of a coin, with two witnesses present, shall be the deciding factor.

23. **NO BID:** In the event an Invitation to Bid is returned as a no bid, "**NO BID**" shall be properly marked on the outside of the envelope with the bid number.
24. **REJECTED BIDS:** The **NEW SMYRNA BEACH UTILITIES** reserves the right to reject bids containing any additional terms or conditions not specifically requested in the original conditions and specifications.
25. **FAILURE OF THE CONTRACTOR TO DELIVER:** Failure of the contractor to deliver within the time specified, or within a reasonable time as interpreted by the **NEW SMYRNA BEACH UTILITIES** or failure to make replacements of rejected articles as directed, shall permit the **NEW SMYRNA BEACH UTILITIES** to purchase on the open market articles of comparable grade to take the place of those rejected or not delivered. On all such purchases, the contractor shall reimburse the **NEW SMYRNA BEACH UTILITIES**, within a reasonable time specified by the Purchasing Authority, for any expenses incurred in excess of the defaulted price. Payments due the contractor by the **NEW SMYRNA BEACH UTILITIES** may be withheld until reimbursement is received.
26. **BRAND OR TRADE NAMES:** When brand or trade names are used in the bid invitation, it is for the purpose of item identification and to establish standards for quality; style and features. Bids on equivalent items will be considered unless items are noted as no substitutes. Equivalent bids must be accompanied by descriptive literature and/or specifications to receive consideration. Demonstrations and/or samples may be required and shall be at no charge to the **NEW SMYRNA BEACH UTILITIES**. The **NEW SMYRNA BEACH UTILITIES** reserve the right to determine if bid goods are equivalent to specified goods.
27. **AWARDS:** Awards shall be made as required for the best interest of the **NEW SMYRNA BEACH UTILITIES**. The right is reserved to make award(s) by individual items, group of items, all or none, or any combination thereof, with one or more suppliers.
28. **NON-WARRANTY OF SPECIFICATIONS:** Due care and diligence have been exercised in the preparation of this Bid and all information contained herein is believed to be substantially correct. However, the responsibility for determining the full extent of the exposures shall rest solely with the provider. Neither the **NEW SMYRNA BEACH UTILITIES** nor its representatives shall be responsible for any errors or omission in this Bid nor for the failure on the part of the bidder(s) to determine the full extent of exposures.

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29. **BID AWARD:** Award is expected to be made to the Bidder who best meets the requirements of NEW SMYRNA BEACH UTILITIES considering responsibility, responsiveness, and price. A written contract and/or purchase order detailing agreed terms will be rendered between the NEW SMYRNA BEACH UTILITIES and the agency achieving a successful proposal. Terms of the contract will include any and all items as specified in the bid, plus mutually agreed terms and conditions.
30. **CLARIFICATION:** The NEW SMYRNA BEACH UTILITIES reserves the right to request clarification of information submitted and to request additional information of one or more Bidders, if needed.
31. **OTHER AGENCIES:** All respondents awarded contracts from this solicitation may, upon mutual agreement, permit any municipality or other government agency to participate in the contract under the same prices, terms and conditions. If the period is not defined within this solicitation, the prices, terms and conditions shall be firm for 120 days from date of award. It is understood that at no time will any city or municipality or other agency be obligated for placing an order for any city municipality or agency, nor will any city municipality or agency be obligated for any bills incurred by any other city or municipality or agency. Further it is understood that each agency shall issue their own purchase order to the awarded respondent(s).

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32. **INSURANCE:** The Contractor shall, at its sole expense, always maintain in effect during the performance of the services insurance coverage with limits not less than those set forth below and with insurers and under forms of policies satisfactory to **NEW SMYRNA BEACH UTILITIES**.

Coverage	Minimum Amounts and Limits
(a) Worker's Compensation	Statutory requirements at location of work
Employer's Liability	\$ 100,000 Each occurrence \$ 300,000 Disease, aggregate \$ 100,000 Disease, each employee
(b) General Liability	\$ 1,000,000 General Aggregate \$ 1,000,000 Products - Comp Ops Agg \$ 500,000 Each Occurrence \$ 50,000 Fire Damage \$ 5,000 Medical Expense
(c) Automobile Liability (owned, hired and non-owned)	\$ 1,000,000 Combined Single Limit
Option of Split Limits:	
(1.) Bodily Injury	\$ 500,000 Per Person \$ 1,000,000 Per Accident
(2.) Property Damage	\$ 500,000

33. **INDEMNIFICATION FOR TORT ACTIONS/LIMITATION OF LIABILITY:**

The provisions of Florida Statute 768.28 applicable to the NEW SMYRNA BEACH UTILITIES apply in full to this contract. Any legal actions to recover monetary damages in tort for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the Utilities NEW SMYRNA BEACH UTILITIES acting within the scope of his/her office or employment are subject to the limitations specified in this statute.

No officer, employee or agent of the NEW SMYRNA BEACH UTILITIES acting within the scope of his/her employment or function shall be held personally liable in tort or named as a defendant in any action for injury or damage suffered as a result of any act, event, or failure to act.

The NEW SMYRNA BEACH UTILITIES shall not be liable in tort for the acts or omissions of an officer, employee or agent committed while acting outside the course and scope of

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his/her employment. This exclusion includes actions committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

To the fullest extent permitted by law, the vendor shall defend, indemnify, and hold harmless the NEW SMYRNA BEACH UTILITIES, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the vendor or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the NEW SMYRNA BEACH UTILITIES.

Provided, however, if the contract between the NEW SMYRNA BEACH UTILITIES and the Contractor is deemed by a court of competent jurisdiction to be a construction contract for purposes of Section 725.06, Florida Statutes, any obligation of the Contractor to defend, indemnify or hold harmless the NEW SMYRNA BEACH UTILITIES, shall be limited to an obligation to indemnify or hold harmless the NEW SMYRNA BEACH UTILITIES, its officers and employees from liability damages, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the contractor and persons employed or utilized by the Contractor in the performance of the contract.

34. **WARRANTY AND ACCEPTANCE:** All material shall be new, and workmanship shall be first class in every respect. The work shall be subject to inspection and acceptance by **NEW SMYRNA BEACH UTILITIES**. Contractor guarantees its work hereunder for a period of twelve (12) months after completion and acceptance of the work unless otherwise set forth herein. In the event **NEW SMYRNA BEACH UTILITIES** discovers defects in material or workmanship at any time before the expiration of the specified warranty period, Contractor shall, upon written notice from **NEW SMYRNA BEACH UTILITIES**, repair or replace at its sole expense any such defects. **NEW SMYRNA BEACH UTILITIES** may perform such repairs or replacements by other reasonable means and Contractor agrees to pay for such corrective measures. Neither acceptance of the work by **NEW SMYRNA BEACH UTILITIES** nor payment shall relieve Contractor from liability under the indemnity clause or any of the guarantees or warranties contained or implied herein.
35. **CHANGES:** **NEW SMYRNA BEACH UTILITIES** may, at any time, direct in writing additions, deletions or changes to all or any part of the work. If any such changes cause an increase or decrease in the cost of or in the time required to perform such work, Contractor shall submit detail information substantiating such claims and an equitable adjustment shall be made to the price or time of performance.
36. **CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE CONTRACTING ENTITY/LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER ELECTED OFFICIALS:** No member or employee

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of the contracting entity/local jurisdiction or its designees or agents; no member of the governing body; and no other public official of the **NEW SMYRNA BEACH UTILITIES** who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts, the language set forth in this paragraph prohibiting conflict of interest.

37. **EMPLOYEE CONFLICT OF INTEREST:** It shall be unethical for any **NEW SMYRNA BEACH UTILITIES** employee to participate directly or indirectly in a procurement contract when the **NEW SMYRNA BEACH UTILITIES** employee knows that:

(1) The **NEW SMYRNA BEACH UTILITIES** employee or any member of the **NEW SMYRNA BEACH UTILITIES** employee's immediate family has a financial interest in the procurement contract; or

(2) Any other person, business, or organization with whom the **NEW SMYRNA BEACH UTILITIES** employee or any member of a **NEW SMYRNA BEACH UTILITIES** employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

A **NEW SMYRNA BEACH UTILITIES** employee or any member of a **NEW SMYRNA BEACH UTILITIES** employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

38. **GRATUITIES AND KICKBACKS:**

(1) Gratuities. It shall be unethical for any person to offer, give, or agree to give any **NEW SMYRNA BEACH UTILITIES** employee or former **NEW SMYRNA BEACH UTILITIES** employee, or for any **NEW SMYRNA BEACH UTILITIES** employee or former **NEW SMYRNA BEACH UTILITIES** employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity **NEW SMYRNA BEACH UTILITIES** in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

(2) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier sub-contractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation, therefore.

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CERTIFICATION OF DRUG-FREE WORKPLACE FORM

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

VENDOR SIGNATURE

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**PUBLIC ENTITY CRIMES FORM
SWORN STATEMENT UNDER SECTION 287.133(3) (1) FLORIDA STATUTES**

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted Bid, Bid or Contract for [ITB 18-23 ANNUAL CONTRACT HAULING OF WET LIME RESIDUALS](#)
2. This sworn statement is submitted by _____
[name of entity submitting sworn statement] whose business address is: _____ and (if applicable) its
Federal Employer Identification Number (FEIN) is _____.
If entity has no FEIN, include the Social Security Number of the individual signing this
sworn statement: _____.
3. My name is _____ and my relationship to the entity named
above is _____.
4. I understand that a “public entity crime” as defined in Paragraph 287.133 (1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state, or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that “convicted” or “conviction” as defined in Paragraph 287.133 (91) (b), Florida Statutes means a finding of guilt or a conviction of a public entity crime, with or without adjudication of guilt, in any federal or state trial court or recording, relating to charges brought by federal or state trial court or recording, relating to charges brought by federal or state trial court or recording, relating to charges brought by indictment or information after July 1, 1989, as a result of just verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
6. I understand the “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means: (1) A Predecessor or Successor of a person convicted of public crime: or (2) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholder, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of public crime in Florida during the preceding 36 months shall be considered an affiliate.

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Public Entity Crimes Statement

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7. I understand that a “person” as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provisions of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in management of an entity.
8. Based on information and belief, that statement which I have marked below is true in relation to the entity submitting this sworn statement. [Please indicate which statement applies]

_____ Neither the entity submitting this sworn statement, or one more of the officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, nor any affiliate or the entity, has been charged with and convicted of public entity subsequent to July 1, 1989, AND [Please indicate which additional statement applies.]

_____ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. [Please attach a copy of the final order.]

_____ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. [Please attach a copy of the final order.]

_____ The person or affiliate has not been placed on the convicted vendor list. [Please describe any action taken by or pending with the Department of General Services.]

Date

Signature

STATE OF: _____

COUNTY OF: _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority, _____
[name of individual signing] who after first sworn by me affixed his/her signature in the space provided above on this _____ day of _____, 20_____.

My COMMISSION expires:

Personally known to me, or

Produced Identification:

Notary Public

Print, Type or Notary Stamp

Type of I.D.

ITB #18-23

LIME RESIDUALS HAULING

New Smyrna Beach Utilities

ITB# 18-23

HAULING OF WET LIME RESIDUALS

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER FORM

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

He/she is _____ of _____, Bidder that has submitted the attached Bid.

He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid.

Neither the said Bidder nor any of its officers, partners, owners, agent representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person, to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the **NEW SMYRNA BEACH UTILITIES**.

The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signed

Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Title

My COMMISSION Expires: _____

ITB #18-23

LIME RESIDUALS HAULING

New Smyrna Beach Utilities

ITB# 18-23

HAULING OF WET LIME RESIDUALS

COMPLIANCE WITH EMPLOYMENT ELIGIBILITY REQUIREMENTS

(§448.095, Florida Statutes – E-Verify)

The E-Verify system is an internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees. Florida Statutes §448.095 provides that any person or entity that has entered or is attempting to enter a contract with New Smyrna Utilities to provide labor, supplies or services must register with and use the E-Verify system to verify the work authorization status of all employees hired after January 1, 2021. Further, the contractor must maintain certain required employment compliance records of sub-contractors for the duration of the contract with New Smyrna Utilities.

Contractor Name: _____

Contractor E-Verify Registration Number: _____

The undersigned, on behalf of the contractor referenced above, after first being duly sworn, states as follows:

1. That said contractor understands that the contractor must comply with §448.095, Florida Statutes.
2. That the contractor uses the E-Verify system to verify the work eligibility status of employees.
3. That the contractor has enrolled in the E-Verify system under the registration number referenced above and will verify the work eligibility status of employees hired after January 1, 2021 through said registration number throughout the contract period of any and all contracts with New Smyrna Utilities.
4. That the contractor will maintain affidavits of sub-contractors engaged to perform work on all contracts with New Smyrna Utilities.
5. That said contractor further understands that violation of §448.095, Florida Statutes may result in lawful termination of a contract by New Smyrna Beach Utilities, subjecting the contractor to liability for additional costs incurred by New Smyrna Utilities as a result of the termination of the contract.

Signed

Title

Subscribed and sworn before me this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
5 Address (number, street, and apt. or suite no.) See Instructions.	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-			-		
OR									
Employer identification number									
				-					

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Date ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

New Smyrna Beach Utilities

ITB# 18-23
HAULING OF WET LIME RESIDUALS

VENDOR APPLICATION

In addition to General conditions, your **BID** may be disqualified if the following vendor information is not returned with your **BID**.

Vendor is:

() Corporation
() Partnership
() Sole Proprietorship
() Other _____ (Explain)

Federal Employer Identification
Number or Social Security Number: _____

Do you collect Florida State Sales Tax? () Yes () No

Firm Name: _____

Mailing Address: _____

Telephone No. _____ Fax No. _____

Email Address: _____ Web Address: _____

Commodity or Service Supply: _____

If vendor is quoting, as a manufacturer's representative and the purchase order should be addressed to the manufacturer in care of the vendor, so indicate.

If remittance address is different from the mailing address so indicate below.

Firm Name: _____

Mailing Address: _____

Submitted by: _____

Name & Title Printed: _____

New Smyrna Beach Utilities

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HAULING OF WET LIME RESIDUALS

QUESTIONNAIRE

Additional space may be required. Please answer questions in the order presented. All questions must be answered, or contractor may be disqualified.

1. Has your company ever been denied insurance or had insurance canceled?
2. Is your company bondable? Has your company ever been denied bond?
If yes, explain.
3. Can your insurance company produce a certificate of insurance stating your limits and naming NEW SMYRNA BEACH UTILITIES as an Additional Insured?
4. Since January 1, 2018, has your company been a defendant in any lawsuits?
5. Is your company a subsidiary or otherwise legally affiliated with any other company?
6. Is your company rated by Dunn & Bradstreet or any other rating agency?
If yes, what is the name of the agency and rating?
7. Is your company in any stage of bankruptcy, including initial filing?
8. Has your company been disbarred by the Federal Government or any State Government?

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LIME RESIDUALS HAULING

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HAULING OF WET LIME RESIDUALS

REFERENCES

Provide the business names, contact persons and telephone numbers of three (3) references for which the firm has provided the services described in this ITB. Include relationships with utility and governmental agencies. It is our intent to contact these references during the award process. Award of this contract will be based on price AS WELL AS REFERENCES AND EXPERIENCE.

1. Name of Company: _____

Address: _____

Point of Contact: _____

Phone Number: _____

Dates of Service: _____

Service(s) Provided: _____

2. Name of Company: _____

Address: _____

Point of Contact: _____

Phone Number: _____

Dates of Service: _____

Service(s) Provided: _____

3. Name of Company: _____

Address: _____

Point of Contact: _____

Phone Number: _____

Dates of Service: _____

Service(s) Provided: _____

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LIME RESIDUALS HAULING

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HAULING OF WET LIME RESIDUALS

REQUIRED DISCLOSURE

At its sole discretion, the **NEW SMYRNA BEACH UTILITIES** may reject any bidder the **NEW SMYRNA BEACH UTILITIES** finds to lack, or whose present or former executive employees, officers, directors, stockholders, partners or owners are found by the **NEW SMYRNA BEACH UTILITIES** to lack honesty, integrity, or moral responsibility. The discretion of the **NEW SMYRNA BEACH UTILITIES** may be exercised based on the **NEW SMYRNA BEACH UTILITIES** own investigation, public records, or any other reliable sources of information. By submitting a bid, bidder recognizes and accepts that the **NEW SMYRNA BEACH UTILITIES** may reject the bid based upon the exercise of its sole discretion and bidder waives any claim it might have for damages or other relief resulting from the rejection of its bid based on these grounds.

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LIME RESIDUALS HAULING

New Smyrna Beach Utilities

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HAULING OF WET LIME RESIDUALS

BID SUBMITTAL REQUIREMENTS

Bids shall include all of the information solicited in this ITB, and any additional information that the **BIDDER** deems pertinent to the understanding and evaluating of the bid. Bids shall be organized, and sections tabbed in the following order. The **BIDDER** should not withhold any information from the written response in anticipation of presenting the information orally or in a demonstration, since oral presentations or demonstrations may not be solicited. All bids shall include, at a minimum, the following information. Failure to supply all of the information requested shall result in the bid being excluded from consideration. The **NEW SMYRNA BEACH UTILITIES** reserves the right to request information or clarification from bidders following the bid opening if omissions are deemed curable.

- TAB #1 Experience:** Provide a profile showing company history, business structure, and a list of principals. A minimum of five (5) years in business is required.
- TAB #2 References:** Submit a detailed list of clients receiving similar services within the last two (2) years. Please include a brief description of the scope of work performed and the name, phone number and email address of the contact person.
- TAB #3 Pricing:** Complete, sign and submit the Bid Tabulation and Bid Form. THIS FORM SHOULD ALSO BE COMPLETED ELECTRONICALLY ON VENDORLINK
- TAB #4 Public Entity Crimes, Non-collusion Affidavit, Drug Free Workplace, Vendor Information, W9 & E-Verify Forms:**
All **BIDDERS** shall properly complete, notarize and submit attachments A,B,C,D & E here
- TAB #5 Addenda Acknowledgement:**
Please submit all addenda (if any) related to this bid here.
- TAB #6 Questionnaire:**
The Questionnaire responses requested should be submitted here
- TAB #7 Detailed Specifications: Business License & Insurance**

GENERAL

Specifications for Disposal of Spent Lime Product from Water Treatment Plant

1. GENERAL INFORMATION

New Smyrna Beach Utilities operates a 10 MGD Water Treatment Plant (WTP), located at 2640 Paige Ave. The lime softening design produces wet lime residuals (approximately 2-5 % solids) during its production process for potable water supplies. This wet lime residual is composed primarily of calcium carbonate (> 93%). NSBU wishes to sign an Agreement to provide for the removal of wet lime residuals from the WTP.

2. SCOPE OF WORK

The successful bidder, hereafter referred to as the HAULER, will meet the following conditions:

The HAULER agrees to transport wet lime residuals from the NSBU'S WTP.

The HAULER will provide a 6,000-gallon tanker to be left at the plant each day so the lime residuals can be pumped into this vessel over the course of a 24-hour period. Then the HAULER will bring an empty tanker and leave that, pick up the full tanker, and continue this process on a 7 day/week frequency. The HAULER will take this material to an approved disposal area and manage that part of the process accordingly.

We are requesting an alternate bid to add a 2nd 6,000-gallon tanker option on an as needed basis to compensate for increased lime residual production at the WTP. This increase may be required due to operation of both clarifiers, and or an increase in served populations creating higher treatment flows.

The HAULER agrees to provide an approved site in compliance with all environmental rules and regulations pertaining to the stockpiling and/or storage and use of wet lime residuals.

The HAULER agrees to take title of all the wet lime residuals the HAULER removes from the COMMISSIONS WTP upon leaving the WTP property.

The HAULER agrees to be responsible for any on site and all roadway spills and or cleanup required during the loading, transportation, and subsequent use of the wet lime residuals by the HAULER'S trucks.

The HAULER will provide for properly licensed equipment operators to operate the HAULER'S equipment.

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HAULING OF WET LIME RESIDUALS

The HAULER agrees to remove one (1) full tanker truckload (approximately 6000 gallons/load) per day, seven days/week of wet lime residuals from the WTP unless the WTP Superintendent (or his designee) calls otherwise with 24-hours' notice to hauler, if any of the routine conditions change due to maintenance.

Each tanker load shall be weighed via a recognized State of Florida Department of Transportation (FDOT) annually certified weigh station. Each tanker load is to be identified by a separate hauling ticket which will include: the gross weight, empty weight, the net weight (i.e., weight of the load of Residuals), and date from the FDOT certified weigh station described above. Each hauling ticket will also include selected bidder's name, address, phone number, driver's name (printed), driver's signature, truck time in/out of WTP per load, disposal location, hauling ticket number, and the COMMISSION WTP operator's signature.

The HAULER agrees that if the conditions listed here are not satisfactorily carried out, as deemed so by the WTP Superintendent, the Agreement can be canceled after thirty (30) days of the HAULER being notified in writing of such.

Contract will be for one (1) year with an option to extend for (3) three additional one-year periods. Price escalation/de-escalation will be permitted at the end of each one-year term upon mutual agreement in writing prior to the end of the contract term.

No commitment can be made by New Smyrna Beach Utilities as to the estimated quantity of work allocated to the successful bidder or bidders.

ITB #18-23

LIME RESIDUALS HAULING

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HAULING OF WET LIME RESIDUALS

BIDDER NAME: _____

APPROXIMATE QUANTITY	DESCRIPTION	UNIT PRICE PER TON	TOTAL PRICE
“ <u>Primary</u> Tanker #1” 11,000 Tons	Wet lime residuals hauling	\$_____/Ton	\$_____
“ <u>Alternate</u> Tanker #2” 5,000 Tons	Wet lime residuals hauling	\$_____/Ton	\$_____

Estimated quantities are approximate for bidder information and evaluation only and no warranty is given or implied as to the individual quantity that will be purchased.

THESE PRICES ARE VALID FOR ORDERS PLACED WITHIN NINETY (90) DAYS FROM THE DATE OF BID OPENING UNLESS SPECIFIED OTHERWISE.

New Smyrna Beach Utilities

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HAULING OF WET LIME RESIDUALS

BIDDER NAME: _____

The NEW SMYRNA BEACH UTILITIES reserves the right to award the contract to the Bidder(s) that the NEW SMYRNA BEACH UTILITIES deems to offer the best overall bid. The NEW SMYRNA BEACH UTILITIES is therefore not bound to accept a bid on the basis of lowest price. In addition, the NEW SMYRNA BEACH UTILITIES at its sole discretion, reserves the right to cancel this Bid, to reject any and all bids, to waive any and all informalities and/or irregularities, to re-advertise with either the identical or revised specifications, or not award a contract at all if it is deemed to be in the best interest of the NEW SMYRNA BEACH UTILITIES to do so. The NEW SMYRNA BEACH UTILITIES also reserves the right to make multiple or split awards if it is deemed to be in the NEW SMYRNA BEACH UTILITIES best interest. The NEW SMYRNA BEACH UTILITIES shall not be responsible for any cost or expense incurred by the Bidder in preparing or submitting a bid or any cost prior to the execution of a contract agreement.

Submitted by: _____

(Please Print)

Company Name: _____

Date: _____

Title: _____

Phone No. _____

Fax No: _____

E-Mail: _____

BIDDERS MUST SIGN BID FORM

ITB #18-23

LIME RESIDUALS HAULING

New Smyrna Beach Utilities

ITB# 18-23

HAULING OF WET LIME RESIDUALS

STATEMENT OF NO BID

If you do **NOT** intend to bid on this requirement/project, please return this form immediately. Thank you, NEW SMYRNA BEACH UTILITIES, City of New Smyrna Beach, Florida

We, the undersigned have declined to submit a bid due to the following reason(s):

- ☐ **Specifications too “tight”, i.e. geared toward one brand/manufacture service only (explain below).**
- ☐ **Unable to meet time period for responding to bid.**
- ☐ **We do not offer this product or service.**
- ☐ **Our schedule would not permit us to perform.**
- ☐ **Unable to meet specifications.**
- ☐ **Unable to meet Bond/Insurance requirement(s).**
- ☐ **Specifications unclear (explain below).**
- ☐ **Unable to meet insurance requirements.**
- ☐ **Please remove us from your “bidder’s list”.**
- ☐ **Other (specify below).**

REMARKS: _____

We understand that if the “No Bid” letter is not executed and returned our name may be deleted from the bidder’s list of the NEW SMYRNA BEACH UTILITIES, City of New Smyrna Beach, FL.

Company Name: _____ E-mail: _____

Bid Number: _____ Date: _____

Signature: _____ Fax: _____

Telephone: _____

ITB #18-23

LIME RESIDUALS HAULING

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR CONTINUING PROFESSIONAL SERVICES ("AGREEMENT") is made and entered into this _____ day of _____, 20____, by and between the **NEW SMYRNA BEACH UTILITIES** (hereafter "**COMMISSION**"), located at 200 Canal Street, New Smyrna Beach, Florida 32168, and _____, (hereafter "**SERVICE PROVIDER**"), located at _____.

RECITALS

1. The **COMMISSION** was created by special act of the Florida Legislature as a political subdivision of the State of Florida with certain powers, authorities, and duties related to the provision of water, wastewater, reclaimed water, and electric utility services, including the authority to enter into contracts .

2. The **COMMISSION** wishes to obtain **ANNUAL CONTRACT FOR SEPTIC SEWER PUMPING** services.

3. The **SERVICE PROVIDER** is willing to provide such services.

ACCORDINGLY, for and in consideration of the Recitals hereof, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the Parties, the Parties hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct and form a material part of this Agreement.

SECTION 2. TERM. This Agreement is to become effective upon execution by both parties. The initial term shall be for **ONE** (1) year(s). Additionally, the parties agree that this Agreement may be renewed beyond the initial term, up to **Three** (3) additional one year periods upon mutual agreement in writing. Either party may elect to terminate the Agreement by giving written notice prior to **THIRTY DAYS (30)**.

SECTION 3. DESCRIPTION OF SERVICES. **SERVICE PROVIDER** agrees to perform Septic Sewer services as specified in Exhibit "A" attached to and incorporated into this Agreement.

SECTION 4. CHANGES IN THE SCOPE OF WORK.

4.1 COMMISSION may make changes in the services at any time by giving written notice to **SERVICE PROVIDER**. If such changes increase, decrease or eliminate any amount of work, **COMMISSION** and **SERVICE PROVIDER** will negotiate any change in total cost or schedule modifications. If **COMMISSION** approves, **COMMISSION** shall amend the Scope of Services to reflect the modifications; and **SERVICE PROVIDER** shall be compensated for said services in

accordance with the terms of Section 5 herein. All change orders shall be in writing and executed by both **COMMISSION'S** designated representative and the **SERVICE PROVIDER**.

4.2 All of **COMMISSION'S** said Scope of Services and amendments thereto shall be performed in strict accordance with the terms of this Agreement insofar as they are applicable.

SECTION 5. SCHEDULE AND PERIOD OF PERFORMANCE.

5.1 **SERVICE PROVIDER** shall perform its services in conformance with the agreed upon schedule. **SERVICE PROVIDER** shall complete all of said services in a timely manner and will keep **COMMISSION** apprised of the status of work on a monthly basis. Should **SERVICE PROVIDER** fall behind the agreed-upon schedule, it shall employ such resources so as to comply with the agreed-upon schedule.

5.2 No extension for completion of services shall be granted to **SERVICE PROVIDER** without **COMMISSION'S** prior written consent, except as provided in Sections 4.1 and 22.1 herein.

SECTION 6. COMPENSATION FOR SERVICES. **COMMISSION** agrees to compensate **SERVICE PROVIDER** for services properly performed at the rates of

SECTION 7. PAYMENT; INVOICES.

7.1 Invoices for **SERVICE PROVIDER'S** services shall be submitted to the **COMMISSION** at monthly intervals for services rendered during the previous period. Each invoice shall delineate the period in which the services were rendered; shall include a summary of the progress to date as a percentage of the major phases of the work. Each invoice shall be certified as correct by a duly authorized representative of **SERVICE PROVIDER**. The bill[s] shall identify the services completed and the amount charged.

7.2 **COMMISSION** or its authorized representative shall have the right, at all reasonable times, at its own expense, to inspect and audit the books and records of **SERVICE PROVIDER** insofar as they pertain to the direct charges payable by **COMMISSION** under this Agreement and such audit is performed within three (3) years after the expiration of this Agreement. The composition of fixed rates will not be subject to audit.

7.3 All invoices shall be due and payable thirty (30) days from receipt thereof by **COMMISSION**, subject to **COMMISSION'S** right to contest, in good faith, all or any part of the charges set forth therein. Payment of invoices shall not be unreasonably withheld by **COMMISSION**, but the **COMMISSION** reserves the right to reject any statement which fails to adequately describe the services rendered by **SERVICE PROVIDER**. Upon written notice to **SERVICE PROVIDER**, payment may be withheld, in whole or in part, for **SERVICE PROVIDER'S** failure to comply with a term, condition or requirement of this Agreement. **SERVICE PROVIDER** will help effect resolution and transmit a revised invoice as necessary.

Thereafter, the withheld amount(s) shall be paid upon **SERVICE PROVIDER'S** satisfactory demonstration of compliance to the **COMMISSION**. Amounts not questioned by **COMMISSION** shall be promptly paid to **SERVICE PROVIDER** in accordance with the above payment procedures.

SECTION 8. RIGHT TO INSPECTION. **COMMISSION** or its affiliates shall at all times have the right to review or observe the services performed by **SERVICE PROVIDER**. No inspection, review, or observation shall relieve **SERVICE PROVIDER** of its responsibility under this Agreement.

SECTION 9. COMMERCIAL WARRANTY. The **SERVICE PROVIDER** agrees that the supplies and services furnished under this award shall be covered by the most favorable commercial warranties the **SERVICE PROVIDER** gives any customers for comparable quantities of such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the **COMMISSION** by any other provision of this award.

SECTION 10. INSPECTION AND ACCEPTANCE. A duly authorized representative of **COMMISSION** will accomplish inspection and acceptance of the supplies/services purchased herein at the designated delivery point.

SECTION 10. SAFETY. To the extent the **COMMISSION'S** safety standards do not violate other County, State or Federal standards, **SERVICE PROVIDER** agrees to comply with **COMMISSION'S** safety standards while on the property of the **COMMISSION**. **SERVICE PROVIDER** shall have full responsibility and assume all liability for the safety and supervision of its employees while performing services provided hereunder.

SECTION 11. INSURANCE.

11.1 SERVICE PROVIDER shall maintain in force during the term of this Agreement, at its own expense, public liability insurance and other insurance coverage as set forth in Exhibit "B" which is hereby made a part of this Agreement.

11.2 SERVICE PROVIDER and **COMMISSION** waive all rights against each other and their respective directors, officers, partners, commissioners, officials, agents, subcontractors, **SERVICE PROVIDERS**, and employees for damages covered by any type of property insurance during and after the completion of the services. A similar provision shall be incorporated into all construction contractual arrangements entered into by **COMMISSION** and shall protect **COMMISSION** and **SERVICE PROVIDER** to the same extent. All project contractors shall be required to include **COMMISSION** and **SERVICE PROVIDER** as additional insureds on their general liability insurance policies.

SECTION 12. STANDARDS OF CONDUCT; COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS.

12.1 The **SERVICE PROVIDER** warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the **SERVICE PROVIDER** to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the **SERVICE PROVIDER** any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

12.2 The **SERVICE PROVIDER** covenants that it or any of its employees presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.

12.3 The **SERVICE PROVIDER** agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to services performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. The **SERVICE PROVIDER** agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the services performed.

12.4 The **SERVICE PROVIDER** shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

12.5 The **SERVICE PROVIDER** warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the **SERVICE PROVIDER** to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporations, individual, or firm, other than a bona fide employee working solely for the **SERVICE PROVIDER** any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

12.6 **SERVICE PROVIDER** is subject to the provisions of Section 287.133(2)(a), Florida Statutes, on Public Entity Crimes.

SECTION 13. SERVICE PROVIDER'S REPRESENTATIONS. On behalf of its employees, agents, servants and contractors, SERVICE PROVIDER represents and warrants to the **COMMISSION** each of the following:

13.1 **SERVICE PROVIDER** represents that the services provided hereunder shall conform to all requirements of this Agreement; shall be consistent with recognized and sound consulting practices and procedures; and shall conform to the professional standards of care, skill, and diligence appropriate to the nature of the services rendered.

13.2 **SERVICE PROVIDER** represents that the personnel furnishing such services shall be qualified and competent to perform the services assigned to them and that such guidance given by and the recommendations and performance of such personnel shall reflect their best personal knowledge and judgment.

13.3 SERVICE PROVIDER represents that if **SERVICE PROVIDER**, through its negligent acts, errors, or omissions, causes any injury to **COMMISSION** or causes any physical damage to, or destruction of, any of **COMMISSION's** property during the term of this Agreement, it shall be liable for said injuries and/or damages, including reasonable attorney fees and costs incurred as a result therefrom.

13.4 SERVICE PROVIDER represents that none of **SERVICE PROVIDER's** principals or the immediate family of **SERVICE PROVIDER's** principals has a compensation arrangement of any kind with City. For purposes of this subsection, the term "immediate family" shall include a spouse, natural or adoptive parent, child or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, grandparent, grandchild or spouse of a grandparent or grandchild. For purposes of this subsection, compensation shall be defined as any type of remuneration directly or indirectly, overtly or covertly, paid in cash or in kind.

13.5 SERVICE PROVIDER represents that it is not undergoing any type of audit by a public or private, state or regulatory body or auditing entity.

13.6 SERVICE PROVIDER represents that it and its principals have not engaged in, and during the term of this Agreement agree not to engage in, any activities prohibited under the federal anti-kickback laws (42 U.S.C. 1320a-7, 1320a-7a, 1320a-7b), the regulations promulgated pursuant to such federal statutes, related state or local statutes or regulations, or rules of professional conduct.

13.7 Should **SERVICE PROVIDER** breach the representations set forth above, **COMMISSION** shall have such remedies as are set forth in this Agreement. To the extent an applicable remedy is not provided herein, both Parties shall have all such remedies as allowed under the laws of the State of Florida. Additionally, without limiting the generality of the foregoing, if prior to the expiration of two (2) years from the date **SERVICE PROVIDER** completes its services hereunder, **SERVICE PROVIDER'S** services are negligent or erroneous and **COMMISSION** notifies **SERVICE PROVIDER** in writing that a negligent error or omission has been discovered in **SERVICE PROVIDER'S** services, **SERVICE PROVIDER** shall correctly perform such negligent services at no additional cost to **COMMISSION** and within a reasonable time period.

SECTION 14. GUARANTEE AGAINST INFRINGEMENT. **SERVICE PROVIDER** guarantees that all services provided under this Agreement shall be free from claims of patent, copyright, and trademark infringement. **SERVICE PROVIDER** shall indemnify, hold harmless, and defend **COMMISSION**, its officers, directors, employees, agents, assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of any goods, services, or other item delivered under this Agreement.

SECTION 15. INDEMNIFICATION. **SERVICE PROVIDER** shall defend, indemnify, and hold harmless the **COMMISSION**, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with **SERVICE PROVIDER'S** negligent performance or non-

performance of any provision of this Agreement including, but not limited to, liabilities arising from Agreements between the **SERVICE PROVIDER** and third parties made pursuant to this Agreement. **SERVICE PROVIDER** shall reimburse the **COMMISSION** for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with **SERVICE PROVIDER'S** performance or non-performance of this Agreement. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, including without limitation Sections 725.06 and 725.08, Fla. Stat., if applicable. The provisions of this section shall survive termination of this Agreement. Ten dollars (\$10) of the payments made by the **COMMISSION** constitute separate, distinct, and independent consideration for the granting of this indemnification, the receipt and sufficiency of which is voluntary and knowingly acknowledged by the **SERVICE PROVIDER**.

SECTION 16. AUDIT; PUBLIC RECORDS RETENTION; DOCUMENTS; OWNERSHIP.

16.1 Upon **COMMISSION'S** or its designated Project Leader's request, at any time during the term of this Agreement or upon completion or termination of this Agreement, **SERVICE PROVIDER** shall provide **COMMISSION** or its designated Project Leader with a copy of all documents prepared by **SERVICE PROVIDER** under this Agreement. Documents shall be original and PDF versions.

16.2 The parties acknowledge that the **COMMISSION** is a part of the government of the City of New Smyrna Beach, Florida, and subject to the Florida Public Records Law. **SERVICE PROVIDER** has been advised the **COMMISSION** that all its activities are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes), and agrees to maintain all records necessary to comply with the requirement of such laws, and for the proper supervision of the services performed pursuant to this Agreement. **SERVICE PROVIDER** agrees to comply with all **COMMISSION** policies and procedures in observing the requirement of said laws. **SERVICE PROVIDER** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the **SERVICE PROVIDER** in conjunction with this **AGREEMENT**. Specifically, the **SERVICE PROVIDER** must:

(1) Keep and maintain public records that ordinarily and necessarily would be required by the **COMMISSION** in order to perform the services being performed by the **SERVICE PROVIDER**.

(2) Provide the public with access to public records on the same terms and conditions that the **COMMISSION** would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(4) Meet all requirements for retaining public records and transfer, at no cost, to the **COMMISSION** all public records in possession of the **SERVICE PROVIDER** upon termination of the **AGREEMENT** and destroy any duplicate public records that are exempt or confidential

and exempt from public records disclosure requirements. All records stored electronically must be provided to the **COMMISSION** in a format that is compatible with the information technology systems of the **COMMISSION**.

The **SERVICE PROVIDER** shall promptly provide the **COMMISSION** with a copy of any request to inspect or copy public records in possession of the **SERVICE PROVIDER** and shall promptly provide the **COMMISSION** a copy of the **SERVICE PROVIDER'S** response to each such request. Failure to grant such public access will be grounds for immediate termination of this **AGREEMENT** by the **COMMISSION**.

16.3 COMMISSION shall have the right to audit the books, records and accounts of **SERVICE PROVIDER** that are related to the performance of Services pursuant to this Agreement. **SERVICE PROVIDER** shall keep such books, records and accounts as may be necessary in order to record complete and correct entries related to this Agreement. **SERVICE PROVIDER** shall preserve and make available, at reasonable times for examination and audit by **COMMISSION**, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or if the Florida Public Records Act is not applicable for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by **COMMISSION** to be applicable to **SERVICE PROVIDER'S** records, **SERVICE PROVIDER** shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by **SERVICE PROVIDER**. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for **COMMISSION** disallowance and/or recovery of any payment upon such entry. The **SERVICE PROVIDER** shall retain all records relating to this Agreement for five years after the **COMMISSION** makes final payment and all other pending matters are closed.

16.4 Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of **COMMISSION**. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by **SERVICE PROVIDER**, whether finished or unfinished, shall become the property of **COMMISSION** and shall be delivered by **SERVICE PROVIDER** to the **COMMISSION** within seven (7) days of termination of this Agreement by either party. Any compensation due to **SERVICE PROVIDER** may be withheld until all documents are received as provided herein.

SECTION 17. ASSIGNMENT

17.1 SERVICE PROVIDER shall not assign or subcontract this Agreement or any rights or any monies due or to become due hereunder without the prior, written consent of **COMMISSION**. All requirements to be observed by the **SERVICE PROVIDER** shall be observed by all subcontractors.

17.2 If upon receiving written approval from **COMMISSION**, any part of this Agreement is subcontracted by **SERVICE PROVIDER**, **SERVICE PROVIDER** shall be fully responsible to **COMMISSION** for all acts and/or omissions performed by the subcontractor as if no subcontract had been made.

17.3 If **COMMISSION** determines that any subcontractor is not performing in accordance with this Agreement, **COMMISSION** shall so notify **SERVICE PROVIDER** who shall take immediate steps to cancel the subcontract, or correct the deficiency. **COMMISSION** shall also be given permission to communicate directly to the subcontractor, which communication shall not constitute interference with contractor/subcontractor relationship, provided that **COMMISSION** notifies **SERVICE PROVIDER** in writing of said communication.

17.4 If any part of this Agreement is subcontracted by **SERVICE PROVIDER** prior to commencement of any work by the subcontractor, **SERVICE PROVIDER** shall require the subcontractor to provide **COMMISSION** with insurance coverage as set forth by Section 11 and Exhibit "B".

SECTION 18. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship will be created by this Agreement. It is understood that **COMMISSION** does not agree to use **SERVICE PROVIDER** exclusively. It is further understood that **SERVICE PROVIDER** is free to contract for similar services to be performed for others while under contract with **COMMISSION**. The parties expressly acknowledge that **SERVICE PROVIDER** is an independent SERVICE PROVIDER, and nothing contained in this Agreement will be deemed or construed to create a partnership or joint venture between **COMMISSION** and **SERVICE PROVIDER** or any other relationship between the parties. Additionally, nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, or to allow **COMMISSION**, or its agents, representative, or employees, to exercise control or direction over the manner or method by which SERVICE PROVIDER performs any services which are the subject of this Agreement.

SECTION 19. AUTHORIZATION. **SERVICE PROVIDER** shall not, without authorization first being given by **COMMISSION**: a) Use or pledge money or credit of the **COMMISSION**, except in the usual and regular course of business and on account of or for the benefit of the **COMMISSION**; b) Release or discharge any debt due to **COMMISSION** without receiving the full amount thereof; c) Commit any act causing seizure or attachment of the **COMMISSION'S** property; or d) Cause **COMMISSION** to become a guarantor, surety, or endorser, or give any note which obligates the **COMMISSION**.

SECTION 20. TAXES. **SERVICE PROVIDER** shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, Social Security, and income tax laws, with respect to **SERVICE PROVIDER'S** performance of this Agreement.

SECTION 21. DEFAULT. If, during the term of this Agreement, **SERVICE PROVIDER** shall be in default of any provision of this Agreement, **COMMISSION** may suspend its payment or performance hereunder until such delinquency or default has been corrected;

provided, however, that no suspension shall be effective unless and until **COMMISSION** gives notice of the default to **SERVICE PROVIDER** with at least ten (10) days to cure such default.

SECTION 22. TERMINATION. Notwithstanding any other provision of this Agreement, **COMMISSION** may, upon fifteen (15) days written notice to **SERVICE PROVIDER**, terminate this Agreement if: (a) **SERVICE PROVIDER** is adjudged to be bankrupt; (b) **SERVICE PROVIDER** makes a general assignment for the benefit of its creditors; (c) **SERVICE PROVIDER** fails to comply with any of the conditions or provisions of this Agreement; or (d) **SERVICE PROVIDER** is experiencing a labor dispute which threatens to have a substantial, adverse impact upon performance of this Agreement, without prejudice to any other right or remedy **COMMISSION** may have under this Agreement; or (e) when deemed by the **COMMISSION** (in its sole discretion) is in the best interest of the **COMMISSION**. In the event of such termination, **COMMISSION** shall be liable only for the payment of all unpaid charges, determined in accordance with the provisions of this Agreement, for work properly performed prior to the effective date of termination.

SECTION 23. FORCE MAJEURE. Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes; extraordinary breakdown or damage to **COMMISSION**'s generating plants, their equipment, or facilities; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes.

SECTION 24. NOTICE. Any notices required to be given by the terms of this Agreement shall be delivered by hand or mailed, postage prepaid, to:

For SERVICE PROVIDER:

For COMMISSION:

New Smyrna Beach Utilities
Attention: Director of Water Resources
P.O. Box 100
New Smyrna Beach, FL 32170-0100
(386) 427-1361

SECTION 25. GOVERNING LAW. This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida.

SECTION 26. SEVERABILITY. In the event any portion of part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of competent jurisdiction, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.

SECTION 27. WAIVER AND ELECTION OF REMEDIES.

27.1 Waiver by **COMMISSION** of any term, condition, or provision of this Agreement shall not be considered a waiver of any term, condition, or provision in the future.

27.2 No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

27.3 Notwithstanding any other provision of this Agreement, the provisions of Sections 14, 15 and 16 shall survive the termination or expiration of this Agreement.

SECTION 28. THIRD PARTY RIGHTS. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than **COMMISSION** and **SERVICE PROVIDER**.

SECTION 29. LIMITATION OF LIABILITY. To the fullest extent permitted by law, **SERVICE PROVIDER'S** total liability for any and all claims, losses, damages and expenses resulting in any way from this Agreement shall not exceed the total compensation received by **SERVICE PROVIDER** under the applicable Scope of Services notwithstanding the fault, tort (including negligence), strict liability or other basis of legal liability of the **SERVICE PROVIDER** and shall extend to its officers, directors, employees, licensors, agents, subcontractors, vendors and related entities.

SECTION 30. CONSEQUENTIAL DAMAGES. Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, **SERVICE PROVIDER** shall not be liable to **COMMISSION** for loss of profits, revenue, use, opportunity, and goodwill; cost of substitute facilities, goods, and services; cost of capital; and increased operating costs.

SECTION 31. ENTIRE AGREEMENT. This Agreement, including Exhibits "A" and "B" constitutes the entire agreement between **COMMISSION** and **SERVICE PROVIDER** with respect to the services specified and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

SECTION 32. JOINT PREPARATION. Preparation of this Agreement has been a joint effort of **COMMISSION** and **SERVICE PROVIDER** and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

COMMISSION:

SERVICE PROVIDER:

New Smyrna Beach Utilities

By: _____

By: _____

Director of Finance/CFO

Its: _____

ATTEST: _____

ATTEST: _____

By: _____

Its: _____

(CORPORATE SEAL)

Director of Department

EXHIBIT "A": SERVICES TO BE PROVIDED INSERT SCOPE OF WORK HERE

SAMPLE

EXHIBIT "B": INSURANCE REQUIREMENTS

I. INSURANCE: Except as otherwise specified in this contract, the **SERVICE PROVIDER** and its subcontractors of any tier will be required at their own expense to maintain in effect at all times during the performance of the work insurance coverage with limits set forth below with insurers and under forms of policies satisfactory to the **COMMISSION**. It shall be the responsibility of the **SERVICE PROVIDER** and its subcontractors to maintain adequate insurance coverage and to assure that subcontractors are adequately insured at all times. Failure of the **SERVICE PROVIDER** and its subcontractors to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation.

The **SERVICE PROVIDER** and its subcontractors shall furnish to the **COMMISSION** such Certificates of Insurance or endorsements required by the provisions set forth herein, which Certificates of Insurance shall name the **COMMISSION** as Additional Insured. All Certificates of Insurance must be provided by an acceptable insurance carrier to the **COMMISSION** and that the carrier should have no less rating than A - X by A.M. Best and Company. **COMMISSION** reserves the right to accept or decline carrier providing coverage.

II. CERTIFICATES OF INSURANCE: At the time of the execution of this contract and each subcontract, but in any event, prior to commencing work, the **SERVICE PROVIDER** and its subcontractors shall furnish the **COMMISSION** with Certificates of Insurance as evidence that the policies providing the required coverages and limits of insurance are in full force and effect. The Certificates shall provide that any company issuing an insurance policy for the work under this contract shall provide not less than thirty (30) days' advance notice to the **COMMISSION** in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, the **SERVICE PROVIDER** shall immediately provide written notice to the **COMMISSION** upon receipt of notice of cancellation of an insurance policy or a decision to terminate or alter any insurance policy. All Certificates of Insurance shall clearly state that all applicable requirements have been satisfied including certification that the Comprehensive General Liability policies are of the "occurrence form". Certificates of Insurance for **SERVICE PROVIDER** and subcontractor-furnished insurance and notices of any cancellations, terminations, or alterations of such policies shall be mailed to the **COMMISSION's** office, ATTN: Materials Manager, at P.O. Box 100, New Smyrna Beach, Florida 32170-0100.

III. ADDITIONAL INSURED: All insurance coverages (except Workers' Compensation and Professional Liability) furnished under this contract shall include the **SERVICE PROVIDER**, the **COMMISSION** and its commissioners, officials, directors, officers, agents, and employees as Additional Insured's with respect to the activities of the **SERVICE PROVIDER** and its subcontractors.

These policies shall contain a "cross-liability" or "severability of interest" clause or endorsement. Notwithstanding any other provisions of these policies, the insurance afforded shall apply separately to each insured, named insured, or Additional Insured with respect to any claim, suit, or judgment made or brought by or for any other insured, named insured, or Additional Insured as though a separate policy had been issued to each, except the insurer's liability shall not be

increased beyond the amount or amounts for which the insurer would have been liable had only one insured been named.

IV. WAIVER OF SUBROGATION: The **SERVICE PROVIDER** and its subcontractors shall require their insurance carrier, with respect to all insurance policies, to waive all rights of subrogation against the **COMMISSION**, its commissioners, officials, directors, officers, agents, and employees.

V. COMPREHENSIVE GENERAL LIABILITY: This insurance shall be an occurrence-type policy written in comprehensive form and shall protect the **SERVICE PROVIDER** and its subcontractors and the Additional Insured's against all claims arising from bodily injury, sickness, disease, or death of any person other than the **SERVICE PROVIDER's** employees or damage to property of the **COMMISSION** or others arising out of the act or omission of the **SERVICE PROVIDER** or its subcontractors or their agents, employees, or subcontractors. This policy shall include protection against claims insured by usual Personal Injury Liability coverage and an endorsement (Protective Liability) to insure the contractual liability assumed by the **SERVICE PROVIDER** and its subcontractors under the Section entitled "Indemnification," as well as Completed Operations, Products Liability, Contractual Liability, Broad Form Property Coverage, Premises/Operations, and Independent Contractors.

Combined Single Limit: \$1,000,000 per claim and annual aggregate of \$2,000,000.

VI. COMPREHENSIVE AUTOMOBILE LIABILITY: This insurance shall be written in the comprehensive form and shall protect the **SERVICE PROVIDER** and its subcontractors and the Additional Insured's against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. The liability shall not be less than:

Combined Single Limit: \$1,000,000 per claim and annual aggregate of \$2,000,000.

VII. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY: The insurance shall protect the **SERVICE PROVIDER** and its subcontractors against all claims under applicable state workers' compensation laws. The insured shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of workers' compensation laws. This policy shall include an all-states endorsement. The liability limits shall not be less than:

Workers' Compensation: Statutory

Employers' Liability: \$100,000 each accident;
\$500,000 disease policy limit;
and
\$100,000 disease, each employee.

VIII. PROFESSIONAL LIABILITY: Professional Liability insurance shall be provided in an amount of \$100,000.