

DRAFT

LEACHATE HAULING SERVICES AGREEMENT (BID-2107-04/TLR)

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between _____, duly authorized to conduct business in the State of Florida, whose address is _____, hereinafter called the "CONTRACTOR" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called the "COUNTY".

W I T N E S S E T H:

WHEREAS, the COUNTY desires to retain the services of a competent and qualified contractor to provide leachate hauling services for Seminole County; and

WHEREAS, the COUNTY has requested and received expressions of interest for the retention of services of contractors; and

WHEREAS, CONTRACTOR is competent and qualified to furnish services to the COUNTY and desires to provide its services according to the terms and conditions stated herein,

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, COUNTY and CONTRACTOR agree as follows:

SECTION 1. SERVICES. COUNTY does hereby retain CONTRACTOR to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto and incorporated herein as Exhibit "A".

SECTION 2. COMMENCEMENT. The services to be rendered by CONTRACTOR shall commence upon execution of this Agreement by the parties.

SECTION 3. COMPENSATION AND PAYMENT.

(a) The COUNTY agrees to compensate CONTRACTOR for the professional services called for under this Agreement fees not to exceed the amount annually budgeted for leachate hauling services. CONTRACTOR shall perform all work required by the Scope of Services but, in no event, shall CONTRACTOR be paid more than the negotiated fees. Compensation shall be paid to the CONTRACTOR at the rates as indicated on Exhibit "B" attached hereto.

(b) Payments shall be made to the CONTRACTOR when requested as work progresses for services furnished, but not more than once monthly. CONTRACTOR may invoice amount due based on the total required services actually performed and completed. Upon review and approval of CONTRACTOR'S invoice, the COUNTY shall, within thirty (30) days of receipt of the invoice, pay CONTRACTOR the approved amount.

SECTION 4. BILLING AND PAYMENT.

(a) CONTRACTOR shall render to the COUNTY, at the close of each calendar month, an itemized invoice, properly dated including, but not limited to, the following information:

- (1) The name and address of the CONTRACTOR;
- (2) Contract Number;
- (3) A complete and accurate record of services performed by the CONTRACTOR for all services performed by the CONTRACTOR during that month and for which the COUNTY is billed;
- (4) A description of the services rendered in (3) above with sufficient detail to identify the exact nature of the work performed; and
- (5) Such other information as may be required by this Agreement or requested by the COUNTY from time to time.

The original invoice shall be sent to:

Director of County Finance
Seminole County Board of County Commissioners
Post Office Box 8080
Sanford, Florida 32772

A duplicate copy of the invoice shall be sent to:

Environmental Services
500 W. Lake Mary Boulevard
Sanford, Florida 32773

(b) Payment shall be made after review and approval by COUNTY within thirty (30) days of receipt of a proper invoice from the CONTRACTOR.

SECTION 5. AUDIT OF RECORDS.

(a) COUNTY may perform or have performed an audit of the records of CONTRACTOR after final payment to support final payment hereunder. This audit would be performed at a time mutually agreeable to CONTRACTOR and COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to CONTRACTOR may be determined subsequent to an audit as provided for in subsection (b) and of this subsection, and the total compensation so determined shall be used to calculate final payment to CONTRACTOR. Conduct of this audit shall not delay final payment as required by Section 4(b).

(b) The CONTRACTOR agrees to maintain all books, documents, papers, accounting records and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at CONTRACTOR's office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsection (a) of this Section.

(c) In the event any audit or inspection conducted after final payment, but within the period provided in subsection (b) of this Section reveals any overpayment by COUNTY under the terms of the

Agreement, CONTRACTOR shall refund such overpayment to COUNTY within thirty (30) days of notice by the COUNTY.

SECTION 6. RESPONSIBILITY OF CONTRACTOR.

(a) CONTRACTOR shall be responsible for the professional quality of all services furnished by CONTRACTOR under this Agreement. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in his services.

(b) Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and the CONTRACTOR shall be and remain liable to the COUNTY in accordance with applicable law for all damages to the COUNTY caused by the CONTRACTOR'S performance of any of the services furnished under this Agreement.

SECTION 7. TERM. This Agreement shall take effect on the date of its execution by COUNTY and shall remain in effect for a period of three (3) years. At the option of the parties, this Agreement may be renewed for two (2) additional one (1) year terms.

SECTION 8. TERMINATION.

(a) The COUNTY may, by written notice to the CONTRACTOR, terminate this Agreement, in whole or in part, at any time, either for the COUNTY'S convenience or because of the failure of the CONTRACTOR to fulfill CONTRACTOR'S Agreement obligations. Upon receipt of such notice, the CONTRACTOR shall immediately discontinue all services affected unless the notice directs otherwise.

(b) If the termination is for the convenience of the COUNTY, the CONTRACTOR shall be paid compensation for services performed to the date of termination.

(c) If the termination is due to the failure of the CONTRACTOR to fulfill his Agreement obligations, the COUNTY may take over the work and prosecute the same to completion by Agreement or otherwise. In such case, the CONTRACTOR shall be liable to the COUNTY for reasonable additional costs occasioned to the COUNTY thereby. The CONTRACTOR shall not be liable for such additional costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the CONTRACTOR. Such causes may include, but are not limited to, acts of God or of the public enemy, acts of the COUNTY in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without the fault or negligence of the CONTRACTOR.

(d) If, after notice of termination for failure to fulfill Agreement obligations, it is determined that the CONTRACTOR had not so failed, the termination shall be deemed to have been effected for the convenience of the COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of the COUNTY provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

SECTION 9. EQUAL OPPORTUNITY EMPLOYMENT. CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited

to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 10. NO CONTINGENT FEES. CONTRACTOR warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that CONTRACTOR has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 11. ASSIGNMENT. This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith.

SECTION 12. SUBCONTRACTORS. In the event CONTRACTOR, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with service covered by this Agreement, CONTRACTOR must secure the prior written approval of the COUNTY. If subcontractors or other professional associates are required in connection with the services covered by this Agreement, CONTRACTOR shall remain fully responsible for the services of subcontractors or other professional associates.

SECTION 13. INDEMNIFICATION OF COUNTY. The CONTRACTOR agrees to hold harmless, replace, and indemnify the COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from the negligent, reckless, or intentionally wrongful provision of services hereunder by the CONTRACTOR, whether caused by the CONTRACTOR or otherwise.

SECTION 14. INSURANCE.

(a) General. The CONTRACTOR shall at the CONTRACTOR'S own cost, procure the insurance required under this Section.

(1) The CONTRACTOR shall furnish the COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability and Commercial General Liability). The COUNTY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that the COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by the CONTRACTOR, the CONTRACTOR shall provide the COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. In lieu of the statement on the Certificate, the CONTRACTOR shall, at the option of the COUNTY submit a sworn, notarized statement from an authorized representative of the insurer that the Certificate is being provided in

accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. **The Certificate shall have this Agreement number clearly marked on its face.**

(3) In addition to providing the Certificate of Insurance, if required by the COUNTY, the CONTRACTOR shall, within thirty (30) days after receipt of the request, provide the COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by the COUNTY or failure to disapprove the insurance furnished by CONTRACTOR shall relieve the CONTRACTOR of the CONTRACTOR'S full responsibility for performance of any obligation including CONTRACTOR'S indemnification of COUNTY under this Agreement.

(b) Insurance Company Requirements. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing policies other than Workers' Compensation must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes. .

(2) In addition, such companies other than those authorized by Section 440.57, Florida Statutes, shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: 1) lose its Certificate of Authority, 2) no longer comply with Section 440.57, Florida Statutes, or 3) fail to

maintain the requisite Best's Rating and Financial Size Category, the CONTRACTOR shall, as soon as the CONTRACTOR has knowledge of any such circumstance, immediately notify the COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the CONTRACTOR has replaced the unacceptable insurer with an insurer acceptable to the COUNTY the CONTRACTOR shall be deemed to be in default of this Agreement.

(c) Specifications. Without limiting any of the other obligations or liability of the CONTRACTOR, the CONTRACTOR shall, at the CONTRACTOR'S sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this Section. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by the CONTRACTOR and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.

(1) Workers' Compensation/Employer's Liability.

(A) CONTRACTOR'S insurance shall cover the CONTRACTOR for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. The CONTRACTOR will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both the CONTRACTOR and its subcontractors are outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the

United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act and any other applicable federal or state law.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

\$ 500,000.00	(Each Accident)
\$1,000,000.00	(Disease-Policy Limit)
\$ 500,000.00	(Disease-Each Employee)

(2) Commercial General Liability.

(A) The CONTRACTOR'S insurance shall cover the CONTRACTOR for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by the CONTRACTOR (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

<u>LIMITS</u>	
General Aggregate	\$Three (3) Times the Each Occurrence Limit
Personal & Advertising Injury Limit	\$500,000.00
Each Occurrence Limit	\$500,000.00

(3) Professional Liability Insurance. The CONTRACTOR shall carry limits of not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00).

(d) Coverage. The insurance provided by CONTRACTOR pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by the COUNTY or the COUNTY'S officials, officers, or employees shall be excess of and not contributing with the insurance provided by or on behalf of the CONTRACTOR.

(e) Occurrence Basis. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must either be on an occurrence basis, or, if a claims-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) Obligations. Compliance with the foregoing insurance requirements shall not relieve the CONTRACTOR, its employees or agents of liability from any obligation under a Section or any other portions of this Agreement.

SECTION 15. ALTERNATIVE DISPUTE RESOLUTION (ADR).

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY ADR procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY ADR procedures for proper invoice and payment disputes are set forth in Section 55.1, "Prompt Payment Procedures," Seminole County Administrative Code. Contract claims include all controversies, except disputes addressed by the "Prompt Payment Procedures," arising under this Agreement and ADR procedures therefore

are set forth in Section 220.106, "Contract Claims," Seminole County Code.

(b) CONTRACTOR agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the COUNTY ADR procedures set forth in subsection (a) above of which the CONTRACTOR had knowledge and failed to present during the COUNTY ADR procedures.

(c) In the event that COUNTY ADR procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

SECTION 16. REPRESENTATIVE OF COUNTY AND CONTRACTOR.

(a) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. The COUNTY, upon request by CONTRACTOR, shall designate in writing and shall advise CONTRACTOR in writing of one (1) or more COUNTY employees to whom all communications pertaining to the day-to-day conduct of the Agreement shall be addressed. The designated representative shall have the authority to transmit instructions, receive information and interpret and define the COUNTY'S policy and decisions pertinent to the work covered by this Agreement.

(b) CONTRACTOR shall, at all times during the normal work week, designate or appoint one or more representatives of CONTRACTOR who are authorized to act on behalf of CONTRACTOR regarding all matters involving the conduct of the performance pursuant to this Agreement and shall keep COUNTY continually advised of such designation.

SECTION 17. ALL PRIOR AGREEMENTS SUPERSEDED. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are not commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

SECTION 18. MODIFICATIONS, AMENDMENTS OR ALTERATIONS. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 19. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of copartners between the parties, or as constituting the CONTRACTOR including its officers, employees, and agents, the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The CONTRACTOR is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

SECTION 20. EMPLOYEE STATUS. Persons employed by the CONTRACTOR in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the COUNTY'S officers and employees either by operation of law or by the COUNTY.

SECTION 21. SERVICES NOT PROVIDED FOR. No claim for services furnished by the CONTRACTOR not specifically provided for herein shall

be honored by the COUNTY.

SECTION 22. PUBLIC RECORDS LAW. CONTRACTOR acknowledges COUNTY'S obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONTRACTOR acknowledges that COUNTY is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

SECTION 23. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

FOR COUNTY:

Environmental Services
500 W. Lake Mary Boulevard
Sanford, Florida 32773

FOR CONTRACTOR:

SECTION 24. RIGHTS AT LAW RETAINED. The rights and remedies of the COUNTY, provided for under this Agreement, are in addition to any other rights and remedies provided by law.

SECTION 25. COMPLIANCE WITH LAWS AND REGULATIONS. In providing all services pursuant to this Agreement, the CONTRACTOR shall abide by all statutes, ordinances, rules, and regulations pertaining to, or

regulating the provisions of, such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to the CONTRACTOR.

SECTION 26. CONFLICT OF INTEREST.

(a) The CONTRACTOR agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) The CONTRACTOR hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of the CONTRACTOR to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, the CONTRACTOR hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal Agency.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST:

, Secretary

By: _____
, President

(CORPORATE SEAL)

Date: _____

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON HENLEY, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution by
the Board of County Commissioners
at their _____, 20____,
regular meeting.

Approved as to form and
legal sufficiency.

County Attorney

AC/lpk
12/2/04
bid-2107

Attachments:

- Exhibit "A" - Scope of Services
- Exhibit "B" - Rate Schedule