



COUNCIL AGENDA STATEMENT

Meeting Date: December 10, 2019
To: Honorable Mayor & Members of the City Council
From: Daniel Saus, Utilities Director
Through: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-120**, Approving an Amendment To The Contract With Biosolids Distribution Services, LLC., For Liquid Sludge Removal Services Previously Approved By Resolution 2019-76 Dated August 13, 2019; Increasing The Contract Amount From the current amount of \$175,000 to \$275,000; and Authorizing The City Manager To Execute The Amendment And Expend Budgeted Funds and Appropriate Additional Funds On Behalf Of The City; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

Pursuant to Resolution 2019-76, the City and Biosolids Distribution Services, LLC entered into a Contract for Liquid Sludge Removal Services (“Contract”). These services are required for continued wastewater facility and collection system operations and maintenance. Additional funding is required for sludge hauling from all wastewater facilities. The extreme high tides to all plants 3 were originally not anticipated and the budget number was only intended for one year but the contract has a two year term. The Utility department requires an increase of \$100,000 in excess of the current Contract amount of \$175,000 for a total amended contract amount of \$275,000.

The proposed Contract Amendment will allow for the purchase of additional sludge removal services through the 2020 budget cycle.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other – 2010 Sewer Mandate	_____	_____
3. Not applicable	_____	_____

FISCAL NOTE:

The adopted FY20 Wastewater Utility Budget includes appropriations of \$80,000 for sludge hauling services, approval of this resolution will appropriate an additional \$20,000 for sludge hauling services for FY20.

RECOMMENDATION:

Approval of Resolution

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2019-120**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE CONTRACT WITH BIOSOLIDS DISTRIBUTION SERVICES, LLC FOR LIQUID SLUDGE REMOVAL SERVICES; INCREASING THE CONTRACT FROM \$175,000 TO \$275,000; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT AND EXPEND BUDGETED FUNDS AND APPROPRIATE ADDITIONAL FUNDS ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, pursuant to Resolution 2019-06 the City and Biosolids Distribution Services, LLC (the “Contractor”), entered into a Contract for Sludge Removal Services; and

WHEREAS, the City and the Contractor desire to enter into the first amendment to the contract as set forth herein to increase the total contract amount from the current Amount of \$175,000 to \$275,000, and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

- Section 1.** The above recitals are true and correct and incorporated herein.
- Section 2.** The pricing is unchanged from the original bid. Attached as Exhibit “A”
- Section 3.** This resolution shall take effect immediately upon its adoption

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10TH DAY OF DECEMBER, 2019.

THE CITY OF MARATHON, FLORIDA

Steven Cook, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

David Migut, City Attorney

EXHIBIT “B”

CITY OF MARATHON LIQUID SLUDGE HAULING & DISPOSAL SERVICES

THIS CONTRACT (the “Contract”) is dated this 9th day of January by and between the CITY OF MARATHON, FLORIDA (hereinafter called the “CITY”) and Biosolids Distribution Services, LLC (hereinafter called “Contractor”) located at 4050 Dundee Rd. Dundee, Florida 33838.

The City and Contractor in consideration of the mutual covenants hereinafter set forth, and subject to the terms and conditions herein stated, the parties agree as follows:

1. Effect/Scope of Work.

The Contractor shall furnish all Work as specified in the Contract Documents. The work is generally described as liquid sludge removal and disposal services for the City’s wastewater facilities or other locations as needed in the City of Marathon limits. Therefore, all work and associated compensation shall be made under the terms, conditions and prices of this Contract and with the Contractor’s bid as specified herein.

2. Contractor Performance.

If Contractor fails to perform according to the requirements of this Contract, City shall notify Contractor in writing. Should the Contractor fail to correct the problem within three (3) calendar days, the City may take further action up to termination.

3. Compensation/Payment.

- a. Contractor shall submit copies of all receipts and other documentation supporting lawful disposal of liquid sludge for each deposit. Contractor shall provide City the name and location of the final destination and disposal facility prior to commencement of Work and within five (5) calendar days of any changes. The City shall be provided with copies of receipts from the disposal facility for each deposit.
- b. Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month. Invoice shall contain copies of documentation for all solid waste disposal, sludge disposal and preventative maintenance log.
- c. The Contractor shall be compensated at the unit prices specified on Exhibit C based upon the actual Work completed for the month.
- d. The City shall make payment of said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.

4. Contract Amendment.

Change Order means a document, which is signed by Contractor and City, and authorizes an addition, deletion or revision in the Scope of Work, or an adjustment in compensation or contract time, issued on or after the effective date of the Contract.

5. Term.

This Contract shall be effective upon execution by both parties. This Contract shall remain in effect for two years from the date of execution unless terminated earlier in accordance with this Contract. The City Manager may, at his/her sole option, extend this Contract on the same terms and conditions for two additional one year term extensions by written notice delivered at least sixty (60) days prior to termination of this Contract.

6. Contractor's Responsibilities.

- a. The Contractor has carefully examined the Scope of Work; the area for the Work contemplated on the Invitation to Bid and has made sufficient investigations to fully satisfy himself as to site conditions, and assumes full responsibility for all related Scope of Work.
- b. The Contractor agrees to coordinate all Work with City's wastewater plant operator or designee.
- c. The Contractor shall maintain applicable license(s) and provide City with all license renewals within ten (10) calendar days of expiration date.
- d. Contractor shall secure and pay for all tipping fees, licenses, insurances and inspections necessary for the execution of the Work. Upon termination of this Contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.
- e. The Contractor hereby certifies its capability of performing all required Work including clean-up from City premises in a neat and timely manner immediately following completion of Work. Contractor agrees to leave City premises in the same or better condition as provided.
- f. The Contractor shall operate the centrifuge equipment using methods that will minimize odor and noise within the limits and capabilities of the City's wastewater facilities. The Contractor agrees that the Work shall be performed in such a manner as to provide a minimum of inconvenience and odors to any neighboring community residing in the area. Any debris or other material spilled shall be immediately removed, cleaned and treated with hydrated lime or other method including the area and surrounding area acceptable to the City.

- g. The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:
1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
 2. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract.
 3. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights, protective devices and danger signals on or near the Work, signage, barricades, or indication of other hazards and obstructions to traffic, and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
 4. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City and of any land adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or sludge, and shall take all necessary or directed steps, to protect all property. The same care shall be exercised by all Contractor's and subcontractor's employees.
 5. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street

monuments, etc., prior to impacting and shall be held strictly liable to the affected utility if any such appurtenances are disturbed, damaged or covered up during the course of the Work.

- h. Contractor agrees that the Work will be primarily performed between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday. Emergency work may also be required.

7. Vehicles and Equipment.

Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. All vehicles used by Contractor to provide services under this Contract shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public and as required by FDOT.

9. Insurance.

- a. The Contractor shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the City against hazards or risks of loss as specified below (as described in Exhibit "B"). The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers, and naming the City as an additional insured.

10. Certificate of Insurance.

Contractor shall provide the City Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The City reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City Manager.

11. Additional Insured.

- a. The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Contractor in performance of this Contract. Contractor's insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of

interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

- b. All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

12. Assignment and Amendment.

No assignment by the Contractor of this Contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Contract without prior written approval of the City Manager. This Contract may only be amended by the parties with the same formalities as this Contract.

13. Non-Waiver.

The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Contract.

14. Indemnification.

- a. Contractor hereby agrees to indemnify, defend and hold harmless the City, and City's officers and employees from liabilities, damages, losses and costs (including, but not limited to, reasonable attorney's fees at any level) on account of or relating to the Work, the bid, any resulting contract or acts related thereto, and whether caused in whole or part by the negligence or fault of City, or otherwise.
- b. The provisions of this INDEMNIFICATION are solely for the benefit of the Contractor and City and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- c. This indemnification obligation shall survive the termination of this Contract.

15. Ownership and Access to Public Records.

15.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing services to the City under this Agreement shall be the property of the City.

15.2 The Consultant is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided 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 for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
 4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.
- 15.3 "Public Records" is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 15.4 Should the Contractor assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Consultant.
- 15.5 The Contractor consents to the City's enforcement of the Consultant's Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney's fees incurred by the City.
- 15.6 The Contractor's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 15.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, CITYCLERK@CI.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

16. No Assignment.

Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the City Manager. Any such assignment without prior approval shall be void ab initio.

17. Applicable Law.

Contractor shall be solely responsible for and shall comply with all federal, state and local laws regarding the Work required hereunder.

18. Termination.

- a. Either party may terminate this Contract without cause upon 30 days written notice to the other party.
- b. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.
- c. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.
- d. The City may terminate this Contract upon five (5) days written notice if the Contractor defaults on any material term of this Contract.

19. Choice of Law.

This Contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County. This Contract and all actions thereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Contract shall be brought in Monroe County, Middle Keys Division, Florida or U.S. Southern District Court.

20. Waiver of Jury Trial and Venue.

The City and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Contract and arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

21. Attorneys' Fees.

If either the City or Contractor is required to enforce the terms of this Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees together with court costs incurred in any litigation at any trial and appellate proceedings.

22. Severability. Should any provision, paragraph, sentence, word, or phrase contained in this document be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and the remainder shall remain unmodified and in full force and effect.

23. Counterparts.

This Contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

24. Notices.

Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

For City:

Charles Lindsey
City Manager
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
Telephone: (305) 743-0033
Facsimile: (305) 289-4123

For Contractor:

Name / Title	<u>Tom Anderson/President</u>
Firm	<u>Biosolids Distribution Services, LLC</u>
Address	<u>4050 Dundee Road</u>
City, State Zip	<u>Winter Haven, FL 33884</u>
Telephone:	<u>863-655-2148</u>
Facsimile:	<u>863-655-2149</u>

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first above written.

Attest:

CITY OF MARATHON

By: _____
Diane Clavier, City Clerk

By: _____
Charles Lindsey, City Manager

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

By: _____
David Migut, City Attorney

Signed, sealed and witnessed in the

As to Contractor:

presence of:

By: _____
Witness

By: _____
President