

COUNCIL AGENDA STATEMENT



Meeting Date: July 13, 2021
To: Honorable Mayor & Members of the City Council
From: Dan Saus, Utilities Manager
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-49**, Approving Contracts for Liquid Sludge Hauling and Disposal Services To Mike Haack Excavating, Inc. and Revinu, Inc. for two years with a possible one year renewal; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The City of Marathon (the “City”) issued an Invitation to Bid (ITB-04222021LF-0-2121-LF) for “Liquid Sludge Hauling and Disposal Services,” (the “Project”) on April 22, 2021, with sealed bids opened and publicly read on June 10, 2021 at 3:30 PM at City Hall.

The Bid Tabulation attached as Exhibit “A-1” lists the responses from Bidders. City staff, recommends approval of both responsive and responsible bidders; Mike Haack Excavating Inc. and Revinu Inc., Mike Haack Excavating submitted the lowest responsive and a responsible bid for the work as shown on Exhibit “A” in the amounts of \$0.22 per gallon for Item #1 and \$.045 per gallon for Item #2. Revinu submitted a bid for item # 1 at \$0.242 per gallon and a no bid on item#2. The proposed bid awards and subsequent contracts will provide the City with liquid sludge disposal services when required. The recommended total annual contract amount is \$90,000.00 each.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	_____
2. Other – 2010 Sewer Mandate	<u>X</u>	_____
3. Not applicable	<u>X</u>	_____

FISCAL NOTE:

Funding for FY22 will be included in the proposed wastewater utility budget. Funding for future years will have to be appropriated during the annual budget processes.

RECOMMENDATION: Approval of Resolution.

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-XX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT FOR “LIQUID SLUDGE HAULING AND DISPOSAL SERVICES” TO MIKE HAACK EXCAVATING INC. AND REVINU INC. FOR A PERIOD OF TWO YEARS WITH A POSSIBLE ONE YEAR RENEWAL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) issued an Invitation to Bid (ITB-04222021LF-0-2021LF) on April 22, 2021 for “Liquid Sludge Hauling and Disposal Services”, (the “Project”); the bids were unsealed and read aloud at City Hall on June 10, 2021 at 3:30 PM; and

WHEREAS, two bidders, Mike Haack Excavating and Revinu Inc. were both found to be responsive and responsible, and the bid documents allow us to award multiple contracts. Mike Haack Excavating bid in the amount of \$0.22 per gallon for bid item #1 & \$0.45 for bid item #2, Revinu Inc. bid \$0.242 per gallon for bid item #1 and provided no bid for bid item #2.

WHEREAS, the City staff wish to enter into a new Liquid Sludge Hauling and Disposal Services Contracts with both bidders, which will enable the City to have its liquid sludge hauled and properly disposed of for FY 21/22;

WHEREAS, the City staff wishes to approve a two (2) year contract for the Sludge Hauling and Disposal Services agreement in an annual amount not to exceed \$90,000; and

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

Section 1. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. The contracts attached hereto as Exhibit “B”, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the Contract and expend budgeted funds on behalf of the City.

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 13th DAY OF JULY, 2021**

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, 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:**

Steve Williams, City Attorney

EXHIBIT "A"

CITY OF MARATHON LIQUID SLUDGE HAULING AND DISPOSAL SERVICES

THIS CONTRACT (the "Contract") is dated this XXXX day of July 2021 by and between the CITY OF MARATHON, FLORIDA (hereinafter called the "CITY") and Mike Haack Excavating, Inc. (hereinafter called "Contractor") located at: PO Box 430725 Big Pine Key, Florida 33043.

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 hauling and disposal services. 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 sludge / cake 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 1 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.
- c. The Contractor shall maintain registration with the City Building Department and renew registration as applicable.
- d. The Contractor shall maintain applicable license(s) and provide City with all license renewals within ten (10) calendar days of expiration date.
- e. 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.
- f. The Contractor shall be responsible for conducting all services necessary to maintain warranties on the centrifuge equipment and trailer.
- g. 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. Each wastewater facility shall be cleaned daily to the satisfaction of the City.
- h. The Contractor shall report to the City within two (2) hours all odor complaints received and respond in a timely manner to remedy any odor complaints. Complaint data shall be maintained and log submitted to the City with each monthly invoice

containing complainant name, address, phone number, date and time of said complaint. Contractor shall provide written details regarding nature of odor, probable origin of odor and the actions taken to remedy and/or mitigate odor.

i. 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 provide on-going training and education for appropriate personnel in all necessary areas for operation and maintenance of the centrifuge equipment.
3. The Contractor shall provide City with written safety program for employees including regularly scheduled safety training sessions, standard operating procedures for chemical handling, and emergency response. Contractor agrees to ensure that employees take all necessary work precautions for handling chemicals. Contractor shall provide employees appropriate personal protective equipment and other appropriate equipment to ensure safe operations, maintenance and chemical handling. Contractor agrees to comply with all applicable **Occupational Safety and Health Administration (OSHA)** standards and regulations.
4. 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.

5. 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.

6. 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.
7. 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.
- j. 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. The Utility Director may require the work to be performed during alternative times as may be required depending upon conditions at the facilities. 72 hour notice will be given to the Contractor for this work.

7. Contractor's Employees.

- a. The Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall respond to the public in a courteous, helpful, and impartial manner.
- b. Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.
- c. Contractor shall, upon receipt of a written request from the City Manager, immediately exclude any employee of Contractor from providing Work under this Contract.

- d. The Work contemplated in this Contract is on public property, accordingly no alcoholic beverages shall be allowed.

8. 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. The City Manager may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

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. 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.
- b. Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts as specified herein.
- c. A Certificate(s) of Insurance shall be provided to show the City of Marathon, Florida as a certificate holder and the certificate shall be provided to the City at the time of execution of the Contract. Insurance shall be underwritten by a firm qualified to do business in the State of Florida.
- d. Contractor shall provide copy of commercial driver's license(s) for personnel that will be responsible for transportation of centrifuge equipment and trailer appropriate to weights provided herein. Copies of any changes in personnel shall be supplied to the City within three (3) calendar days.
- e. Contractor shall provide copies of certificates of insurance for Comprehensive General Liability and Business Automobile Liability insurance with limits as follows:
 - 1. Comprehensive general liability insurance with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
 - 2. Business Automobile Liability with minimum limits of \$1,000,000.00 per person, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability each. Coverage must be afforded on a form

no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned Vehicles, Hired and Non-Owned Vehicles and Employers' Non-Ownership.

3. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
4. Contractors Pollution Liability Insurance with minimum limits of \$1,000,000.00 per person, per occurrence, to cover operations and any resulting pollution incidents.

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 Consultant 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 Consultant 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 Consultant 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 Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant 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 Consultant 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 Consultant 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 Consultant’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@CL.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

16. Inspection and Audit.

During the term of this Contract and for three (3) years from the date of Termination, Contractor shall allow City representatives access during reasonable business hours to Contractor's records related to this Contract for the purposes of inspection or audit of such records. If upon audit of such records, the City determines the Contractor was paid for services not performed, upon receipt of written demand by the City, the Contractor shall remit such payments to the City.

17. 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.

18. Applicable Law.

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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:

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

For Contractor:

Name / Title	<u>Mike Haack</u>
Firm	<u>Mike Haack Excavating, Inc.</u>
Address	<u>PO Box 430725</u>
City, State Zip	<u>Big Pine Key, FL 33043</u>
Telephone:	<u>305-872-8945</u>
Facsimile:	<u></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: _____

George Garrett, City Manager

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

By: _____

Steve Williams, City Attorney

Signed, sealed and witnessed in the presence of:

As to Contractor:

By: _____

Witness

By: _____

Mike Haack, President
Mike Haack Excavating, Inc.

EXHIBIT “B”

CITY OF MARATHON LIQUID SLUDGE HAULING AND DISPOSAL SERVICES

THIS CONTRACT (the “Contract”) is dated this XXXX day of July 2021 by and between the CITY OF MARATHON, FLORIDA (hereinafter called the “CITY”) and Revinu, Inc. (hereinafter called “Contractor”) located at: 4050 Dundee Road Winter Haven, Florida 33884.

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 hauling and disposal services. 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 sludge / cake 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 1 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.
- c. The Contractor shall maintain registration with the City Building Department and renew registration as applicable.
- d. The Contractor shall maintain applicable license(s) and provide City with all license renewals within ten (10) calendar days of expiration date.
- e. 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.
- f. The Contractor shall be responsible for conducting all services necessary to maintain warranties on the centrifuge equipment and trailer.
- g. 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. Each wastewater facility shall be cleaned daily to the satisfaction of the City.
- h. The Contractor shall report to the City within two (2) hours all odor complaints received and respond in a timely manner to remedy any odor complaints. Complaint data shall be maintained and log submitted to the City with each monthly invoice

containing complainant name, address, phone number, date and time of said complaint. Contractor shall provide written details regarding nature of odor, probable origin of odor and the actions taken to remedy and/or mitigate odor.

- i. 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 provide on-going training and education for appropriate personnel in all necessary areas for operation and maintenance of the centrifuge equipment.
3. The Contractor shall provide City with written safety program for employees including regularly scheduled safety training sessions, standard operating procedures for chemical handling, and emergency response. Contractor agrees to ensure that employees take all necessary work precautions for handling chemicals. Contractor shall provide employees appropriate personal protective equipment and other appropriate equipment to ensure safe operations, maintenance and chemical handling. Contractor agrees to comply with all applicable **Occupational Safety and Health Administration (OSHA)** standards and regulations.
4. 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.

5. 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.

6. 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.
7. 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.
- j. 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. The Utility Director may require the work to be performed during alternative times as may be required depending upon conditions at the facilities. 72 hour notice will be given to the Contractor for this work.

7. Contractor's Employees.

- a. The Contractor shall at all times have a competent supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall respond to the public in a courteous, helpful, and impartial manner.
- b. Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.
- c. Contractor shall, upon receipt of a written request from the City Manager, immediately exclude any employee of Contractor from providing Work under this Contract.

- d. The Work contemplated in this Contract is on public property, accordingly no alcoholic beverages shall be allowed.

8. 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. The City Manager may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles.

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. 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.
- b. Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts as specified herein.
- c. A Certificate(s) of Insurance shall be provided to show the City of Marathon, Florida as a certificate holder and the certificate shall be provided to the City at the time of execution of the Contract. Insurance shall be underwritten by a firm qualified to do business in the State of Florida.
- d. Contractor shall provide copy of commercial driver's license(s) for personnel that will be responsible for transportation of centrifuge equipment and trailer appropriate to weights provided herein. Copies of any changes in personnel shall be supplied to the City within three (3) calendar days.
- e. Contractor shall provide copies of certificates of insurance for Comprehensive General Liability and Business Automobile Liability insurance with limits as follows:
 - 1. Comprehensive general liability insurance with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
 - 2. Business Automobile Liability with minimum limits of \$1,000,000.00 per person, per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability each. Coverage must be afforded on a form

no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned Vehicles, Hired and Non-Owned Vehicles and Employers' Non-Ownership.

3. Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws.
4. Contractors Pollution Liability Insurance with minimum limits of \$1,000,000.00 per person, per occurrence, to cover operations and any resulting pollution incidents.

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 Consultant 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 Consultant 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 Consultant 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 Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant 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 Consultant 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 Consultant 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 Consultant’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@CL.MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

16. Inspection and Audit.

During the term of this Contract and for three (3) years from the date of Termination, Contractor shall allow City representatives access during reasonable business hours to Contractor's records related to this Contract for the purposes of inspection or audit of such records. If upon audit of such records, the City determines the Contractor was paid for services not performed, upon receipt of written demand by the City, the Contractor shall remit such payments to the City.

17. 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.

18. Applicable Law.

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

19. 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.

20. 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.

21. 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.

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: _____

George Garrett, City Manager

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

By: _____

Steve Williams, City Attorney

Signed, sealed and witnessed in the presence of:

As to Contractor:

By: _____

Witness

By: _____

**Donna Birt, CFO
Revinu, Inc.**