

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: September 8, 2020
RE: **Agreement with Charah, LLC for the Operation of McIntosh Power Plant's Combustion Byproduct Facility and Purchase of Selected Byproduct**

Attached hereto for your consideration is a proposed Agreement with Charah, LLC (Charah) to operate the existing Coal Combustion Byproduct (CCB) facility at McIntosh Power Plant and purchase selected coal byproduct. The byproducts produced from the coal burning operations at Unit 3 include fly ash, bottom ash and gypsum. All three (3) byproducts are currently sold to two (2) other third-party vendors through the City's combustion byproduct marketing program. Those third-party agreements will expire September 30, 2020 and May 31, 2021, respectively.

Due to the expiration of one of these third-party agreements at the end of September and the planned decommissioning of Unit 3, Lakeland Electric staff sought to find a contractor that could operate the City's CCB facility, as well as purchase the coal byproduct for sale. While finding a contractor to operate the CCB facility will help consolidate the City's CCB operations, it will also assist Lakeland Electric in managing the number of personnel it has as the closing of Unit 3 approaches.

Accordingly, on January 27, 2020, the City's Purchasing Department issued Request for Proposal (RFP) No. 0050 seeking qualified contractors to operate the City's coal combustion byproducts production facility, as well as market its byproducts such as fly ash, bottom ash, gypsum and reclaimed landfill material. The City received responses from the three (3) companies listed below.

Contractor	Location
Charah, LLC	Louisville, KY
Boral Resources, LLC	Roswell, GA
Separation Technologies, LLC	Deerfield Beach, FL

Upon evaluation by Lakeland Electric staff, Charah was selected as the most responsive, responsible contractor capable of offering the services requested pursuant to the City's RFP and provided the City with the most beneficial overall

financial impact. The term of this Agreement will be for a period of five (5) years, effective October 1, 2020, subject to City Commission approval. Either party may terminate the Agreement with 90 days prior written notice to the other party. In accordance with the Agreement, Charah will operate the CCB facility, load the byproduct from the CCB facility and the City's Landfill, and be given the exclusive right to purchase all of the City's coal byproduct such as fly ash, bottom ash, and gypsum. Charah will also have the exclusive right to purchase any of the City's available landfill reclaim material.

Pursuant to the Agreement, the City is not required to provide Charah with a minimum or maximum quantity of coal byproduct or landfill reclaim material during the term of the Agreement. Charah will compensate the City for its coal byproduct on a per ton rate based on the type of byproduct being sold. The City will be given a 50% revenue share of the average sales price of landfill reclaim material sold by Charah. The revenue to the City from Charah's purchase of byproduct in FY21 is estimated to be approximately \$833,000, which is based on historic byproduct sale totals. In addition, Lakeland Electric staff anticipates cost savings in the amount of \$50,000 per year in facility maintenance costs resulting from Charah's management of the CCB facility and loading operations. This is in addition to any savings that may result from reduction of personnel. Upon the decommissioning of Unit 3, the revenue from the sale of byproduct will drop to near zero as the only byproduct available for sale will be from the City's Landfill.

It is recommended that the City Commission approve this Agreement with Charah and authorize the appropriate City officials to execute all corresponding documents on behalf of the City.

Attachment

MATERIAL SALES AND HANDLING AGREEMENT

This Agreement (“Agreement”) is effective as of this 1st day of October 2020 (the “Effective Date”), by and between the **City of Lakeland, Florida**, a municipality organized and existing in accordance with the laws of the State of Florida, on behalf of its municipal utility, Lakeland Electric, having its principal place of business at 501 East Lemon Street, Lakeland, Florida 33801 (collectively the “CITY”), and **Charah, LLC**, a limited liability corporation, whose address is 12601 Plantside Drive, Louisville, Kentucky 40299 (“CHARAH”). The CITY and CHARAH shall collectively be referred to as “Parties.”

RECITALS:

WHEREAS, the CITY’s McIntosh Power Plant Unit 3 (“Plant”) produces Fly Ash, Non-Spec Fly Ash, Bottom Ash, Gypsum, and Landfill Reclaim Material (collectively, the “Products”) as by-products; and

WHEREAS, the CITY issued Request for Proposal (RFP) No. 0050 for Operation of Coal Combustion Byproduct Facilities and Material Sales on January 27, 2020 and CHARAH was selected as the most responsive responsible bidder; and

WHEREAS, CHARAH represents and warrants that it is experienced in the use of the Products; and

WHEREAS, CITY desires to sell the Products to CHARAH, and CHARAH desires to purchase the Products from CITY, under the terms and conditions set forth herein.

AGREEMENT:

Now, therefore, for and in consideration of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

1. Definitions

For the purposes of this Agreement, the following terms shall have the respective meanings indicated below unless the context otherwise requires:

- a) “Products” or “CCB” shall mean, collectively, Specification Grade Fly Ash, Non-Spec Fly Ash, Bottom Ash, Gypsum, and Landfill Reclaim Material.
- b) “Specification Grade Fly Ash” shall mean fine, solid, non-combustible particles of coal ash collected from the flue gas by means of mechanical or electrostatic precipitators resulting as a byproduct from the combustion of pulverized coal that meets the definitions of ASTM C-618 and AASHTO M-295 Class F specifications.
- c) “Non-Spec Fly Ash” shall mean any fly ash not meeting the specifications of ASTM C-618 or AASHTO M-295 Class F.
- d) “Bottom Ash” shall mean agglomerated non-combustible ash particles that are produced from the combustion of coal in steam generating electric plants, are too large to be carried in the flu gas, and are therefore collected in an ash hopper at the bottom of the furnace.
- e) “Landfill Reclaim Material” shall mean material that has been reclaimed from the CITY’s onsite landfill area via mechanical means and made available for loading at the CITY’s coal

combustion byproduct storage pad. Landfill Reclaim Material will be a combination of Specification Grade Fly Ash, Non-Spec Fly Ash, Bottom Ash, and Gypsum.

- f) "Gypsum" shall mean calcium sulfate dihydrate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$) or flue gas synthetic gypsum produced as a byproduct from flue gas desulphurization scrubbers on one or more coal burning electric power generating units.
- g) "Specification Grade Gypsum" shall mean byproduct produced from the flue gas desulfurization operation at the Plant that shall comply with the requirements of ASTM C- 22 and the requirements stated in this Agreement and shall not contain material quantities of any hazardous materials.
- h) "Non-Specification Grade Gypsum" shall mean byproduct produced from the flue gas desulfurization operation at the Plant that shall comply with the requirements of ASTM C- 22 but may not comply with one or more of the requirements stated in this Agreement provided such byproduct shall not contain material quantities of any hazardous materials.
- i) "Ton" shall mean two thousand (2,000) pounds avoirdupois.
- j) "Term" shall mean the Initial Term (as defined in Paragraph 14 below) plus any Extension Terms (as defined in Paragraph 14 below).
- k) "Event(s) of Force Majeure" shall have the meaning ascribed in Paragraph 11 below.
- l) "Initial Term" shall have the meaning ascribed in Paragraph 14 below.
- m) "Extension Term" shall have the meanings ascribed in Paragraph 14 below.
- n) "Contract Term" shall mean a period of five (5) years during the Initial Term of this Agreement. The Initial Term shall commence on the Effective Date of this Agreement, as defined in the introductory paragraph.
- o) "State" shall mean the State of Florida.
- p) "Hazardous Materials" shall mean those materials included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", "contaminants" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Sections 9601, et seq.); the Hazardous Materials Transportation Act, as amended (49 USC Sections 1801, et seq.); the Resource Conservation and Recovery Act, as amended (42 USC Sections 9601, et seq.); the Toxic Substance Control Act as amended (15 USC Section 2601 et seq.); the Environmental Protection Act. R.S.O. 1990, C.E. 19; the Environmental Protection Act, S.C. 1991 c. 15.3, as amended; and in any of the regulations adopted, published, and promulgated pursuant to said laws, or in any other Laws and Regulations.
- q) "Holiday" shall mean any CITY observed holiday in which the CITY is closed for business.

2. Right to Purchase the Products

CITY grants to CHARAH the exclusive right to purchase the Products produced at the Plant during the Initial Term of this Agreement in such quantities as determined by CHARAH subject to the terms,

conditions and limitations contained in this Agreement. The CITY shall not be required to provide either a minimum or maximum quantity of the Products during any particular time period hereunder, or over the course of this Agreement. From time to time the CITY may designate, upon ten (10) days prior written notice to CHARAH, certain Products produced at the Plant as not available for purchase by CHARAH in order to meet regulatory requirements, sustain existing Plant operations or meet other obligations including, but not limited to, CITY's contractual obligations with other vendors.

3. **Cooperation between Parties.**

- a) CHARAH and the CITY shall cooperate to achieve the objectives of this Agreement.
- b) CHARAH and the CITY will identify the major components of the CCB Collection and Loading Facility and determine a routine maintenance schedule for that equipment.
- c) Annual costs for subcontractor (third-party) provided labor and/or specialty maintenance services, which shall include, but may not be limited to conveyor belt replacement, drive motor replacement, dust collector baghouse maintenance, etc. or any repair in excess of Three Thousand Dollars and 00/100 (\$3,000), will be provided by CHARAH up to a maximum amount totaling Fifty Thousand Dollars and 00/100 (\$50,000) per year. Costs for these third-party services in excess of \$50,000 per year will be charged to the CITY at zero cost markup. Any unused portion of the annual Fifty Thousand Dollars and 00/100 (\$50,000) allowance will be carried over to subsequent contract years for future utilization, as needed.
- d) In the event CHARAH must use a subcontractor (third-party) to provide labor and/or specialty maintenance services, CHARAH will provide the CITY with the option of completing the specialty maintenance services by CITY. In the event the Fifty Thousand Dollars and 00/100 (\$50,000) per year maintenance allowance has not been exhausted, CHARAH will use the allowance to pay the CITY for actual costs of maintenance up to the Fifty Thousand Dollars and 00/100 (\$50,000) maximum maintenance allowance.

4. **CHARAH's Responsibilities.** In addition to the other requirements of this Agreement, CHARAH shall have the following responsibilities:

- a) CHARAH shall provide a single point of contact on a 24/7 basis for daily coordination of all matters with the CITY related to this Agreement including, without limitation, contractual and operational issues;
- b) CHARAH shall provide regular information at least one or more full business day in advance to the CITY regarding how much of each Product that it wishes to purchase so that the CITY may plan how to accommodate CHARAH's request; and
- c) CHARAH shall obtain any and all permits or licenses required for transportation of the Product hereunder.
- d) CHARAH shall be responsible for routine greasing, cleaning, and typical preventive maintenance.
- e) CHARAH shall be responsible for operation and routine maintenance of the CCB collection and loading facility at no additional cost to the CITY; provided, however, that the CITY shall be responsible for the provision and cost of any replacement parts or components, which shall include, but not be limited to, any parts or components the CITY currently has in stock and any parts or components not supplied by CHARAH through routine maintenance, and related

services. Routine maintenance shall include, without limitation, checking gauge pressures, lubricating equipment, inspecting oil and lubricant levels, greasing bearings, sampling, performing routine housekeeping, maintaining an active record log of all inspections, etc. Routine maintenance activities may be added or deleted upon mutual written agreement by both Parties.

- f) CHARAH will engage in marketing efforts to increase the volume of Landfill Reclaim Material recovered and sold.

5. **CITY's Responsibilities.** In addition to the other requirements of this Agreement, the CITY shall have the following responsibilities:

- a) Provide a single point of contact on a 24/7 basis for daily coordination of all matters related to this Agreement with CHARAH including, without limitation, contractual and operational issues;
- b) Provide at least fourteen (14) days advance notice of any planned Plant maintenance outages; and
- c) Provide all personnel and equipment required to operate and manage the Landfill. It will be the responsibility of CHARAH to safely load the Landfill Material under section 6.d.i.
- d) Any maintenance or repairs exceeding Three Thousand Dollars and 00/100 (\$3,000.00) aggregate cost per event will be planned and approved by the CITY prior to execution. Parts issued from the CITY's warehouse will be authorized by the CITY foreman for the area. Parts and labor supplied by the CITY at the CITY's expense will be counted as a portion of The CITY's maintenance contribution for the year as set forth in Paragraph 3(c), above.
- e) Due to current economics in the power industry and environmental issues the CITY does not make any volume guarantees for Product going forward. In addition, the CITY does not guarantee the number of years of operation going forward. Nothing in this Agreement will amount to a financial penalty to the CITY if operations were to cease. Each Party will be given ninety (90) days' prior written notice of termination of the Agreement.

6. **Unloading, Loading, and Transportation Operations.**

- a) **CHARAH Access**

The CITY shall provide full and convenient access during identified operating hours to and from all Product storage and loading facilities on CITY property to all of the employees, contractors, subcontractors, customers, and guests of CHARAH. Such persons will be subject to CITY's normal and reasonable Plant visitation policies.

- b) **Transportation**

CHARAH will be solely responsible for the transportation of the Products from the Plant.

- c) **Products Loading Hours**

- i. Loading hours shall be Monday through Friday, 6:00 AM to 3:00 PM eastern time (excluding Holidays unless previously approved, in writing, by CITY) during each

week that the Plant is operating, unless changed by mutual written agreement of the Parties.

- ii. Any trucks arriving after 2:50 PM will not be loaded unless the operator and loader are present at the point of Products loading. All daily loading operations shall be concluded by 3:30 PM on all identified days unless otherwise changed by the mutual written agreement of the Parties. The CITY reserves the right to extend or otherwise modify loading hours if circumstances require a change.

d) Products Loading

- i. Unless other arrangements are agreed upon by the Parties, CHARAH shall be responsible for the proper and safe loading of the Products, including Landfill Reclaim Material, at the Plant into the trucks that CHARAH or the CITY has engaged to transport the Products. CHARAH shall be responsible for any loss, injury or damage arising from CHARAH's negligent use or willful misconduct while loading the Products, including use of any of the CITY's equipment.
- ii. Unless other arrangements are agreed upon, in writing, by the Parties, the CITY shall be responsible for the excavation of Landfill Reclaim Material at the Plant.
- iii. With respect to the trucks that CHARAH has engaged to transport the Products:
 - a. After a truck is properly loaded, CHARAH shall assume all responsibility and liability for clean-up of spills, unless caused by the negligence or willful misconduct of the CITY or its representatives.
 - b. CHARAH shall assume all responsibility and liability for any damage to persons or property arising from transport of the Products, unless caused by the negligence or willful misconduct of the CITY or its representatives.

e) Determination of Product Quantities

- i. To determine quantities of the Products loaded for shipment off-site, each truck shall be weighed unloaded and then loaded at the Plant on scales furnished by CITY. If any other forms of transportation are used, Parties will mutually agree on means of establishing weight.
- ii. Truck Scales - The CITY shall calibrate the scales as required by applicable laws and regulations to maintain accuracy. Records of the frequency and results of the calibration data will be available upon request.

f) Shipment and Purchase Documentation

CHARAH shall document each shipment of the Products including, without limitation:

- i. CHARAH shall provide a bill of lading ("BOL") to each CHARAH transporter before departing the Plant. When the truck is properly loaded, CHARAH shall complete the BOL for each truck loaded, including: the product shipped, the tare and loaded weights, signatures of CHARAH and the truck driver and any other information provided by CHARAH. CHARAH will not issue a BOL if the truck is over the legal weight limit

as determined by the State.

g) Disclaimer of Warranties

CHARAH acknowledges and agrees that it is purchasing the Products from the CITY without any representation or warranty by the CITY as to the condition and/or suitability other than the specifications set forth in this Agreement and that the Products shall not contain material quantities of any Hazardous Materials. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE CITY DISCLAIMS ANY WARRANTIES OF ANY NATURE WHATSOEVER, WHETHER STATUTORY, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR USE OR PURPOSE AND WARRANTIES ARISING FROM THE COURSE OF DEALING, OR USAGE OF TRADE.

7. Quality Control Program

- a) To ensure Product quality and to meet any third-party specification or governmental requirements, CHARAH will perform the functions of the Quality Control Program and provide all personnel required to accomplish the sampling, testing, and reporting of the Products set forth in **Exhibit "A"**.
- b) The CITY will provide all equipment required to accomplish testing of the Products set forth in **Exhibit "A"**.
- c) In addition to the minimum requirements set forth in **Exhibit "A"**, both Parties have the right to collect and test samples of the Products at its own discretion and cost.
- d) An independent third party may be called upon to perform Product testing if there is a dispute between the Parties pertaining to a Product compliance with the specifications set forth in this Agreement that cannot be resolved. Each Party will be initially responsible for costs associated with any third-party sampling, testing, and reporting of Product test results that it may request. In the event that the third-party testing confirms a deficiency in the Product specifications then the party that is determined to be wrong shall assume all reasonable costs submitted by the third party that performed the product testing.

8. Title and Risk of Loss.

Title to and risk of loss with respect to the Products shall pass to CHARAH when the Products are properly loaded at the Plant onto the truck owned or engaged by CHARAH to deliver the Products to its desired locations.

9. Compensation to CITY.

CHARAH shall purchase the Products produced by the CITY and compensate the CITY and the Parties shall share revenue from the sales of the Products in accordance with the revenue sharing rates set forth in **Exhibit "A"**.

Charah shall prepare and provide the CITY with a monthly report no later than the 5th day of each month that summarizes the quantity of sales of the Products, total sales revenues of Landfill Reclaim Material only and the average FOB sales price of Landfill Reclaim Material only. The CITY shall prepare a monthly invoice for all Products purchased during the preceding calendar month. CHARAH shall pay all

compensation due to the CITY as described by this Agreement within thirty (30) days after receipt of the CITY's invoice.

10. Default.

Each of the following shall constitute a default under this Agreement:

- a) either Party is adjudged to be bankrupt;
- b) either Party makes a general assignment for the benefit of its creditors; or
- c) either Party fails to comply with any of the terms, conditions or provisions of this Agreement including failure to make timely payments.

If, during the term of this Agreement, a Party shall be in default of this Agreement, the other Party may suspend its performance hereunder until such delinquency or the default has been corrected; provided, however that no suspension shall be effective unless and until the affected Party gives written notice of default to the defaulting Party with at least thirty (30) days to cure such default. If the defaulting Party fails to correct such delinquency or default within thirty (30) days of written notice of the default, the aggrieved Party may terminate this Agreement and pursue such remedies as may be available at law or in equity. In addition to the remedies available hereunder, the aggrieved Party shall have the right of offset from sums or payments otherwise due the defaulting Party.

11. Force Majeure.

Time is of the essence with regard to this Agreement, however, neither Party shall be liable to the other for any damages for any failure to perform or for any delays or interruptions beyond that Party's reasonable control in performing any of its obligations under this Agreement due to acts of God, fires, floods, weather, earthquakes, riots, civil insurrection, terrorism, epidemics and pandemics, labor disputes or disturbances, acts of the public enemy, or acts or failures to act of civil or military authority (herein called "Events of Force Majeure"). The claiming Party shall advise the other Party of any anticipated and actual failure, delay, or interruption and the cause and estimated duration of such event. Any such failure, delay, or interruption, even though existing on the date of this Agreement or on the date of the start of the Work, shall require the claiming Party to within seven (7) days submit a recovery plan detailing the manner in which the failure, delay, or interruption shall be remedied and the revised schedule. The claiming Party shall diligently proceed with its obligations hereunder notwithstanding the occurrence thereof. This Paragraph shall apply only to the part of the claiming Party's responsibilities directly affected by the particular failure, delay, or interruption and shall not apply to the claiming Party's responsibilities as a whole or any other unaffected part thereof

12. Insurance.

CHARAH shall not begin any operations under this Agreement until it has obtained all the insurance required herein and has furnished certificates of insurance evidencing such insurance coverage to CITY. Every certificate of insurance required herein shall be endorsed to provide CITY with at least thirty (30) days written notice of change or cancellation. Except for Workers' Compensation, CHARAH's insurance policies shall be endorsed to name the City of Lakeland as additional insured. It is agreed that CHARAH's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the CITY for liability arising out of the operations of this Agreement. CHARAH shall maintain the following coverage for the term of this Agreement:

Commercial General Liability - \$1,000,000 combined single limit (bodily injury and property damage) each occurrence.

This insurance shall be an “occurrence” type policy written in comprehensive form and shall protect CHARAH and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than CHARAH's employees or damage to property of the City or others arising out of any act or omission of CHARAH or its agents, employees, or subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by CHARAH under the article entitled INDEMNIFICATION, and “Products and Completed Operations” coverage.

Business Automobile Liability - \$1,000,000 combined single limit (bodily injury and property damage) each occurrence.

Workers’ Compensation – Workers’ Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. (“All States” endorsement is required where applicable.) If exempt from Worker's Compensation coverage, as defined by Florida State Statue 440, the Other Party will provide a copy of State Workers’ Compensation exemption.

All subcontractors shall be required to maintain Workers’ Compensation.

Umbrella Liability - This insurance shall protect CHARAH and the additional insured against all claims in excess of the limits provided under the employer's liability, commercial automobile liability, and commercial liability policies. The policy shall be an “occurrence” type policy, and shall follow the form of the general and automobile liability.

The liability limits shall not be less than \$1,000,000 each occurrence.

13. **Compliance with Laws.** CITY and CHARAH shall, with regard to their respective obligations under this Agreement, comply with all applicable laws, ordinances, decisions, orders, rules and regulations of the United States and any state, county, township or municipal subdivision thereof, or other governmental agency, including without limitation, any laws pertaining to the generation, transportation, handling, processing, marketing, sale, use or disposal of the Products.

14. Term of Agreement.

The initial term (“Initial Term”) of this Agreement shall be for an initial period of five (5) years commencing on Effective Date (as defined in the introductory paragraph of this Agreement), unless otherwise cancelled or terminated as provided herein.

This Agreement may be extended by mutual written agreement of the Parties for two (2) additional one (1) year terms following the expiration of the initial term or a shorter term as otherwise agreed to in writing by the parties (each an “Extension Term”).

15. Notices.

Any notices to be given hereunder shall be deemed sufficiently given when in writing and

signed and (i) personally served on the Party to be notified, (ii) one day following deposit for delivery by overnight express courier. or (iii) three (3) business days following deposit in the United States mail, postage prepaid certified delivery, directed to the Party to be notified at the following address:

If to CITY:

McIntosh Power Plant
3030 East Lake Parker Drive
Lakeland, Florida 33805
863-834-6600
Attn: Supervisor of Chemical Process
863-834-5639

With a copy to:

Lakeland Electric
Attn: Contracts Administrator (LE-Contracts)
501 East Lemon Street
Lakeland, FL 33801

If to CHARAH, LLC:

CHARAH, LLC
12601 Plantside Drive
Louisville, Kentucky 40299
Attn: Scott Sewell (President & CEO)

16. Dispute Resolution.

- a) The parties to this Agreement shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between their respective executives who have authority to settle the controversy. Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Within ten (10) days after the date that the notice is deemed to have been delivered, executives of the disputing parties shall agree to meet at a designated time and place or via teleconference and thereafter as often as they reasonably deem necessary. to exchange relevant information and to attempt to resolve the dispute. The first of those meetings shall take place within thirty (30) days after the date that the notice referred to above has been deemed to be delivered. If the matter has not been resolved within sixty (60) days of the disputing Party's notice, or if the parties fail to agree on a time and place for an initial meeting within ten (10) days of delivery of that notice, either Party may initiate mediation of the dispute pursuant to Paragraph 16(b).
- b) Should the parties fail to resolve a dispute using the procedure set forth in Paragraph 16(a) above, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association in accordance with its Commercial Mediation Rules. If the dispute has not been settled by mediation within ninety (90) days from the date it is submitted to mediation, or if either Party has failed to participate in the mediation, the other Party may immediately initiate the pursuit of any remedy available at law or in equity, subject to limitations set forth herein.

17. Miscellaneous.

- a) This Agreement shall extend to and bind the parties and their respective successors and assigns. Neither Party hereto shall assign this Agreement without the written consent of the

other, which consent shall not be unreasonably withheld, conditioned or delayed.

- b) This Agreement including all exhibits constitutes the complete agreement between the parties and contains the entire understanding among the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. Any amendment to this Agreement shall be in a writing signed by authorized representatives of both parties.
- c) This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida, without regard to such state's choice of law provisions that may dictate that the law of another state shall prevail. The parties agree that jurisdiction shall be in the courts of Polk County, Florida or the U.S. District Court in and for the Middle District of Florida, Tampa, Division.
- d) In the event any portion or part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.
- e) The headings of the paragraphs, and other parts of this Agreement are for convenience only and do not define, limit, or construe the contents thereof.
- f) No waiver of any of the terms and conditions of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance. Waiver by either Party of any terms, condition, or provision of this Agreement shall not be considered a waiver of that term, condition, or provision in the future. No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each Party hereto.
- g) Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other.
- h) Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the CITY and CHARAH.
- i) This Agreement shall supersede any rights, terms and obligations between the parties previously set forth in the Gypsum Agreement between the parties dated June 4, 2018. All terms and conditions set forth in this Agreement shall govern the rights and obligations of the parties hereto.

18. Public Records.

IF CHARAH HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CHARAH'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK- DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E- MAIL:

**KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN:
COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS
AVE., LAKELAND, FLORIDA 33801.**

In accordance with Florida Statute §119.0701, CHARAH shall keep and maintain public records required by the CITY in performance of services pursuant to the contract. Upon request from the CITY'S custodian of public records, CHARAH shall 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 pursuant to Florida Statute Chapter 119 or as otherwise provided by law. CHARAH shall 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 CHARAH does not transfer the records to the CITY. CHARAH shall, upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of CHARAH or keep and maintain public records required by the CITY to perform services pursuant to the contract. If CHARAH transfers all public records to the CITY upon completion of the contract CHARAH shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CHARAH keeps and maintains public records upon completion of the contract, CHARAH shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records, in a format that is compatible with the information technology systems of the CITY.

19. Indemnification.

To the fullest extent permitted by laws and regulations, and in consideration of the terms and conditions set forth in this Agreement, each Party (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other Party (the "Indemnified Party"), its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from: (i) a breach of the Indemnifying Party's obligations under this Agreement, or (ii) any acts of negligence, recklessness or intentional wrongful misconduct in the performance of the Indemnifying Party's obligations hereunder, any subcontractor, or any person or organization directly or indirectly employed by the Indemnifying Party to perform or furnish any of the obligations hereunder or anyone for whose acts the Indemnifying Party may be liable.

In any and all claims against the Indemnified Party, or any of its officers, directors, agents, or employees by any employee of the Indemnifying Party, any subcontractor, any person or organization directly or indirectly employed by the Indemnifying Party to perform any obligations under this Agreement or furnish any of the work or anyone for whose acts the Indemnifying Party may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Indemnifying Party or any such subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the Indemnified Party, the Indemnifying Party, or any of its subcontractors. To the extent this Indemnification conflicts with any provision of Florida Law or Statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statute.

20. **Subrogation.** CHARAH and its subcontractors agree by entering into this Agreement to a Waiver

of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit CHARAH or its subcontractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then CHARAH or its subcontractors agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should CHARAH or its subcontractors enter into such an agreement on a pre-loss basis.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated below but it is effective as of the Effective Date contained herein.

CITY OF LAKELAND, FLORIDA

CHARAH, LLC

By: _____

By: _____

Name: H. William Mutz

Name: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

Name: Kelly S. Koos

Name: _____

Title: City Clerk

Title: _____

APPROVED AS TO FORM AND CORRECTNESS

By: _____

Name: Palmer C. Davis

Title: City Attorney

Exhibit A

The Parties shall participate in revenue sharing in accordance with the following terms:

Charah shall compensate the City the following on CCB materials sold from McIntosh:

- a) \$30.00 royalty rate to the CITY per ton of Specification Grade Fly Ash sold via truck from McIntosh.
- b) \$10.00 royalty rate to the CITY per ton of Non- Spec Fly Ash sold via truck from McIntosh.
- c) \$2.00 royalty rate to the CITY per ton of Gypsum sold via truck from McIntosh.
- d) \$2.00 royalty rate to the CITY per ton of Bottom Ash sold via truck from McIntosh.
- e) Fifty percent (50%) revenue share of the average FOB sales price to the CITY per ton of Reclaimed Landfill Materials sold via truck from McIntosh.