

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: June 15, 2020

RE: Ash Marketing Agreement with Separation Technologies, LLC

Attached hereto for your consideration is a proposed short-term Agreement with Separation Technologies, LLC (ST) for Lakeland Electric's combustion byproduct marketing program. Byproducts produced from the coal burning operations at McIntosh Unit 3 include fly ash, bottom ash and gypsum. All three (3) byproducts are sold to third parties through the City's combustion byproduct marketing program.

In April 2012, the City Commission approved an agreement with ST to market the fly ash and bottom ash produced by McIntosh Unit 3. The Agreement was amended several times to extend the contract term through May 31, 2020. In the interim, staff has been working to finalize a long-term agreement for the entire combustion byproduct marketing program with another third-party vendor selected pursuant to Bid No. 0050 issued by the City's Purchasing Department. This long-term Agreement is expected to be brought before the City Commission for approval in July. Transition to the new vendor is expected to take 60 to 90 days. During the transition period, it will be necessary to have ST continue to market the fly ash and bottom ash.

Upon approval by the City Commission, this short-term Agreement with ST will have a retroactive effective date of June 1, 2020 and will continue through October 1, 2020, with the ability of either party to terminate upon 60 days' prior written notice. All other terms of the Agreement are consistent with the original 2012 Agreement and its subsequent amendments. The sale of fly ash and bottom ash to ST during this four (4) month Agreement is anticipated to generate approximately \$250,000 in revenue for Lakeland Electric.

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

Attachment

ASH MARKETING CONTRACT

This Ash Marketing Contract (this “Agreement”) is entered into June 15, 2020, between The CITY of Lakeland, a Florida municipal corporation (the "CITY"), whose address is 228 South Massachusetts Avenue, Lakeland, Florida, 33801, and Separation Technologies LLC (“ST”), whose address is 188 Summerfield Court, Suite 101, Roanoke, Virginia, 24019. The CITY and ST shall collectively be referred to as “Parties.”

WHEREAS, coal combustion at CITY’s McIntosh Power Plant Unit 3 (“Plant”) produces various coal combustion products (“CCPs”) as byproducts;

WHEREAS, ST represents and warrants that it is experienced in the sale, use, and marketing of CCPs; and

WHEREAS, CITY desires to employ ST to market CCPs on its behalf on a short-term basis, and ST desires to market CCPs on behalf of the CITY under the terms and conditions hereof;

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. “Activation Date” shall mean the date determined by the CITY in which ST may begin shipping Byproducts from the Plant.

b. “Byproduct(s)” shall include the following CCPs that were produced at the Plant:

- i. Specification Grade Fly Ash,
- ii. Non-Specification Grade Fly Ash,
- iii. Conditioned Fly Ash, and
- iv. Bottom Ash.

c. “Fly Ash” shall mean the finely divided ash produced from the combustion of coal in the McIntosh Unit 3 boiler and collected by the electrostatic precipitator.

d. “Specification Grade Fly Ash” shall mean Fly Ash with less than or equal to 6% loss on ignition (“LOI”) and complies with (i) the minimum requirements for Class F Fly Ash as set forth by ASTM C-618 and (ii) Florida Department of Transportation Standard Specification For Road and Bridge Construction, Section 929 “Pozzolans and Slag.”

e. “Non-Specification Grade Fly Ash” shall mean any Fly Ash that does not otherwise meet the minimum requirements for Class F Fly Ash as set forth by ASTM C-618; this shall include any Fly Ash.

f. “Conditioned Fly Ash” shall mean any Fly Ash that has been reclaimed from the Plant’s landfill.

g. "Bottom Ash" shall mean coal ash collected at the bottom of the boiler that may contain coal mill rejects (pyrites) or pyrite-like (coal) contaminants and a moisture content of thirty percent (30%) or less prior to loading.

h. "Ton" shall mean two thousand (2,000) pounds avoirdupois.

i. "Term" shall mean Term as defined in Section 16.

j. "Event(s) of Force Majeure" shall have the meaning ascribed in Section 10 below.

k. "Net Revenue" shall be the sum of money, exclusive of actual freight costs, which customers pay ST for any Byproducts purchased.

l. "Customer" shall mean the purchaser of any Byproducts sold by ST under this Agreement and shall include any third parties employed by the purchaser to transport Byproducts or are otherwise involved in the transaction in which Byproducts are purchased under this Agreement.

2. Objectives. ST and the CITY shall cooperate to achieve the objectives of this Agreement. The primary objective is to see that all Byproducts sold are safely and timely removed from the Plant in accordance with this Agreement and all applicable laws and regulations and to the extent that there is no financial loss to the Parties. The secondary objective of this Agreement is to maximize the financial return to the Parties that result from the sale of any Byproducts and both Parties shall bear their own individual costs associated with this Agreement.

3. ST's Responsibilities. In addition to the other requirements of this Agreement, ST shall have the following responsibilities:

a. ST will provide all sales, marketing, technical support and any testing other than what has been set forth in Exhibit A of this Agreement, customer call center, freight and logistics, and accounts payable and accounts receivable services required for ST to sell Byproducts produced at the CITY's Plant.

b. ST will provide CITY a single point of contact on a 24/7 basis for daily coordination of all matters related to this Agreement including, without limitation, marketing and operational issues;

c. ST will be solely responsible for responding to its Customers inquiring about Byproducts obtained from CITY;

d. ST will coordinate and communicate with the CITY on at least a weekly basis to determine what quantities of Byproducts are available for sale and schedule daily loading requirements for the upcoming week. ST will make a reasonable effort to sell all Byproducts made available for sale by the CITY. Notwithstanding anything to the contrary in this Agreement, the CITY shall not be obligated to offer any minimum amounts of Byproducts for sale at any time and in no event will ST be liable for any unsold Byproducts.

e. ST shall obtain any and all permits or licenses required for transportation and sale of the Byproducts if it provides transportation and notify any of its Customers to do the same if the Customer provides transportation of any purchased Byproducts from CITY hereunder; and

f. ST will provide Bill of Lading (BOL) forms during the term of the Agreement to the CITY to be used for each truckload of Byproduct shipped, and instructions for completing the forms.

g. ST will ensure that its employees and its Customers comply with the safety requirements set forth in Exhibit B of this Agreement when at the Plant.

4. CITY's Responsibilities.

In addition to the other requirements of this Agreement, CITY shall have the following responsibilities:

a. Make all Byproducts available exclusively to ST during the Term of this Agreement unless otherwise agreed to in writing by the Parties;

b. Provide all personnel and equipment required to safely load Byproducts;

c. Provide all personnel and equipment required to carry out quality control program for Byproducts described in Exhibit A of this Agreement;

d. Identify estimated quantities of Byproducts that are available for sale on a weekly basis, unless otherwise agreed to by the Parties;

e. Provide written notification to ST a minimum of two (2) weeks in advance of planned outages and as soon as is reasonably possible of unplanned outages; and

f. Properly dispose, at CITY's sole expense, of all Byproducts not sold by ST under this Agreement.

5. Loading and Transportation Operations.

a. ST Access - The CITY shall provide full and convenient access during identified loading hours to and from all Byproduct storage and loading facilities on CITY property to all of the employees, contractors, subcontractors, and Customers of ST. Such persons will be subject to CITY's normal and reasonable Plant visitation policies, rules, and procedures.

b. Loading Hours –

i. Fly Ash loading hours shall be Monday through Friday, 6:00 AM to 4:00 PM eastern time (excluding holidays) during each week that the Plant is operating, unless changed by mutual written agreement of the Parties.

- ii. Bottom Ash loading hours shall be 6:30 AM to 4:00 PM eastern time on Wednesday (excluding holidays) only of each week that the Plant is operating, unless changed by mutual written agreement of the Parties.
- iii. Any trucks arriving after 4:00 PM will not be loaded. All daily loading operations shall be concluded by 4:30 PM on all identified days unless otherwise changed by the mutual written agreement of the Parties. The CITY reserves the right to extend or alter loading hours if circumstances require a change without penalty or expense.
- iv. If the CITY is unable to load ST's trucks or those of ST's Customers during the specified or mutually agreed loading hours due to equipment failure at the Plant then the Byproducts in storage at the time will be considered not available for purchase during such failure unless otherwise agreed to, in writing, by the CITY and ST. In addition, unless the CITY provides 12-hour notice, ST may invoice the CITY for actual transportation costs incurred, up to \$150 per scheduled truckload, for unreasonable loading delays caused by the CITY. The full extent of the CITY's liability to ST or any other involved parties shall be strictly limited to reimbursement of actual transportation costs incurred up to a maximum amount of \$150 for each truck that was dispatched to the Plant but returned empty due to equipment failure at the Plant. In no event shall the CITY be liable for or incur transportation costs for loading delays resulting from equipment damage/failure caused by ST's trucks or its Customers.

c. Fly Ash Operations- The CITY will make all Fly Ash available for purchase on any identified loading day except that Fly Ash which the CITY may utilize, in its sole discretion, to maintain existing Plant operations.

d. Bottom Ash Operations - The CITY will drain the remaining water trapped above the hydrobin slidegate from 6:00 AM to 6:30 AM on the day that Bottom Ash is to be shipped. All Bottom Ash sold by ST shall be shipped during the specified loading hours on each Wednesday of a typical week before each hydrobin is to be placed back into service. ST shall use reasonable efforts to empty each hydrobin before it needs to be returned to service but is under no obligation to do so. Unless the CITY and ST have mutually agreed, in writing, to extend the Bottom Ash loading period during a particular week, the CITY may dispose of any unacceptable Bottom Ash accumulation. The CITY will provide a designated area for ST to temporarily store its trucks that have been loaded with Bottom Ash if any water is dripping from the Customer's truck onto the ground after loading. However, ST and its Customers may elect not to load vehicles with Bottom Ash if moisture levels are elevated to the extent that water would be dripping onto the ground from the loaded truck.

e. Daily Operations Report - The CITY shall send an operations report to ST's point of contact by e-mail by 9:00 AM of each loading day. This written report shall include:

- Fly Ash Silo level at 8 AM;
- Date of next hydrobin service change;
- Expected hours of operation of the coal fired unit until the next loading day;
- Quantity of fly ash shipped by grade and bottom ash shipped on the previous loading day;
- Any need to dispose of a Product that day to maintain operations;

- Notification that Fly Ash or Bottom Ash was disposed by the CITY on the previous loading day.
- LOI, fineness, and moisture of last Fly Ash sample tested.

f. Transportation - ST will be solely responsible for the safe and lawful transportation of the Byproducts from the loading area at the Plant to its Customers. ST shall either provide for the transportation of any Byproducts sold or ensure that its Customer provides for transportation of any Byproducts purchased. No trucks will be allowed to enter the Plant or be loaded until ST and/or its Customer has complied with the requirements stated in this Agreement. Unless other arrangements are agreed upon by the Parties, CITY shall be solely responsible for the proper, lawful and safe loading of Byproducts from CITY-owned facilities onto the trucks engaged to transport the Byproducts. The CITY shall clean up any spills on the CITY's property caused by the CITY. The CITY will not knowingly issue a BOL if a truck is over the legal weight limit. Once the trucks are properly loaded, ST shall assume all responsibility and liability for clean-up of spills or other damage to persons or property arising from transport of Byproducts by ST or its Customers, unless caused by the direct negligence or willful misconduct of the CITY or its representatives.

g. Shipment and Purchase Documentation - The CITY shall document, in writing, each shipment of Byproduct including, without limitation:

- i. The CITY shall provide a BOL to each Byproduct transporter upon arrival at the Plant. The transporter shall complete the top of the BOL and return it to the CITY. When the truck is properly loaded the CITY shall complete the bottom of the BOL for each shipment including: the product shipped, the tare and loaded weight, and signatures of Weighmaster (CITY) and transporter.
- ii. The CITY shall send the original top copy of each BOL to ST on a weekly basis by U.S. mail or electronic transfer via the Internet.

h. Determination of Quantities. To determine quantities of Byproducts loaded for shipment off-site, each truck shall be weighed unloaded and loaded at the Plant on scales furnished by CITY. The CITY shall calibrate these scales as required by State of Florida regulations to maintain accuracy. Records of the frequency and results of the calibration data will be available upon request. If any other forms of transportation are used, Parties will mutually agree on means of loading and establishing weight.

i. ST shall make commercially reasonable efforts to market and transport the Byproducts at a rate sufficient to avoid excess accumulation of Fly Ash and Bottom Ash in their respective storage areas. The CITY shall have no other recourse than to send excessive Fly Ash and/or Bottom Ash to the Plant landfill for disposal, at CITY's own discretion and expense, and is not liable to ST for any lost sales opportunities resulting from such disposal.

6. Quality Control Program

a. To ensure Byproduct quality and to meet any third party specification, or governmental regulation requirements, the Parties will cooperate in a Quality Control Program for all Byproducts as set forth on Exhibit "A."

b. The CITY will perform the functions of the Quality Control Program and provide all personnel and equipment required to facilitate the sampling and testing of Byproducts.

c. ST will be solely responsible for all costs associated with any third party sampling, testing and reporting of Byproduct test results requested by ST or its Customers or any regulating entities, i.e. Florida Department of Transportation, etc.

(i) Any third party testing at the Plant's landfill will be for the sole purpose of determining the quality of the Conditioned Ash contained there and its suitability for marketing and/or its use as cement kiln feed, and will be conducted only upon the prior written approval of the CITY. ST shall provide the CITY with a written scope of work for approval, shall schedule the testing at a time approved by the CITY, and shall provide the CITY with a complete report of the results of the testing.

d. CITY maintains the right to collect and test samples of Byproducts at its discretion.

7. Title and Risk of Loss. Title to and risk of loss with respect to the Byproducts shall pass to ST, or ST's customer, as applicable, when the Byproducts are properly loaded onto the truck owned or engaged by ST or the Customer to deliver the Byproducts. If loading facilities are constructed in the future which will permit loading onto a mode of transportation other than a truck, then title to and risk of loss shall pass to ST or its Customers, when applicable, when the Byproducts are properly loaded onto such other mode of transportation vehicle owned or engaged by ST to deliver the Byproducts to its Customers.

8. Compensation. The Parties agree that any Net Revenue that ST receives from the sale of any Byproducts will be divided between the Parties as follows:

a. For Specification Grade Fly Ash:

- i. ST shall retain for itself the first \$5/ton of Net Revenue;
- ii. ST shall pay to the CITY the next \$5/ton of Net Revenue; and
- iii. ST shall pay to the CITY fifty percent (50%) of any Net Revenue in excess of \$10/ton.

b. For Non-Specification Fly Ash, Conditioned Fly Ash and Bottom Ash:

- i. ST shall pay to the CITY the first \$2.00/ton of Net Revenue;
- ii. ST shall retain for itself the next \$2.00/ton of Net Revenue; and
- iii. ST shall pay to the CITY fifty percent (50%) of any Net Revenue in excess of \$4/ton.

ST shall prepare a written monthly statement summarizing all Byproduct sales for each calendar month and submit to the CITY by the fourteenth (14th) day of the following month for review. The monthly statement shall clearly indicate the Byproduct quantities sold, corresponding sale price, payment terms, actual freight cost, and calculation showing distribution of net revenue as described above.

ST shall pay all compensation due to the CITY as described by this Agreement for all Byproduct sales within forty-five (45) days following the month of sale unless otherwise agreed to by the Parties. In the event that ST does not submit a payment to the CITY when due then compounded interest shall accrue on such overdue amounts at the rate of one percent (1%) per month. ST shall be responsible for all payment collection costs but the Parties are proportionately liable for all bad debt expense based upon the net revenue distribution described above for the Byproducts sold. ST shall regularly report the status of all bad debt collection activities and corresponding net revenues within the written monthly statement previously described.

The CITY shall have the right to audit ST at any time to verify that all net revenue obtained from marketing Byproducts supplied by the CITY has been correctly determined and distributed by ST in accordance with this Agreement.

9. 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; (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.

10. Force Majeure. 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, earthquakes, riots, civil insurrection, terrorism, labor disputes or disturbances, unforeseen Plant equipment failure, 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 within 36 hours (excluding weekends and holidays) of any anticipated and/or 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, if a feasible and commercially reasonable remedy is available and the corresponding revised schedule. The claiming party shall diligently proceed with the Work not affected by the Event of Force Majeure. This Section shall apply only to the part of the Work directly affected by the particular failure, delay, or interruption, and shall not apply to the Work as a whole or any other unaffected part thereof.

11. Insurance. ST 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. The CITY shall be listed as an “Additional Insured” in respect to both Commercial General and Business Automobile Liability with respect to ST’s operations. ST 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 ST and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than ST’s employees or damage to property of the CITY or others arising out of any act or omission of ST 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.

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.)

All subcontractors shall be required to maintain WORKERS’ Compensation.

12. Indemnification. To the fullest extent permitted by laws and regulations, ST shall defend, indemnify, and hold harmless the CITY, 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) due to any claims for personal injury or property damage, to the extent due to any acts of negligence, recklessness or intentional wrongful misconduct in the performance of the work by ST, its Customers, or any person or organization directly or indirectly employed by ST to perform or furnish any of the work or anyone for whose acts any of them may be liable. Notwithstanding the foregoing, CITY acknowledges and agrees that the Byproducts shall be sold for use in concrete and/or cement-based applications and the indemnification obligations of this Agreement shall not extend to any claims arising out of such use.

In any and all claims against the CITY, or any of its officers, directors, agents, or employees by any employee of ST, any person or organization directly or indirectly employed by ST or its Customers to perform or furnish any of the work or anyone for whose acts any of them 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 ST 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 CITY or ST. 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.

13. Subrogation. ST agrees by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit ST to enter into a pre-loss agreement to waive subrogation without an endorsement, then ST agrees 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 ST enter into such an agreement on a pre-loss basis.

14. Savings Clause. The Parties agree that to the extent the written terms of Section 12 conflict with any provisions of Florida laws or statutes, in particular Sections 725.06 and 725.08 of the Florida Statutes, the written terms of Section 12 shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes and to contain such limiting conditions, or limitations of liability, or to not contain any unenforceable, or prohibited term or terms, such that this Indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida Law.

15. Compliance with Laws. The CITY and ST 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 Byproducts.

16. Term of Agreement. The Term of this Agreement shall be effective of June 1, 2020 through October 1, 2020, unless otherwise terminated as provided herein.

17. Termination for Convenience. Notwithstanding any other provision of this Agreement, either party, upon providing sixty (60) days prior written notice to the other party, may terminate this Agreement for its convenience without liability to the other party. ST shall pay any outstanding monies due to the CITY within thirty (30) days after the effective date that the Agreement is terminated unless otherwise agreed to by the Parties.

18. Notices. Any notices to be given hereunder shall be deemed sufficiently given when in writing 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 33805-9513

Attn: Plant Manager
Byproduct Marketing Program
863-834-6600

With a copy to:

Lakeland Electric
Attn: Contracts Services (A-32)
501 East Lemon Street
Lakeland, FL 33801

If to ST:

Separation Technologies LLC
188 Summerfield Ct. Suite 201
Roanoke, VA 24019

Attn: Randy Dunlap
540-966-6833

With a copy to:

Titan America LLC
Attn: General Counsel
5700 Lake Wright Dr. Suite 300
Norfolk, VA 23502

19. 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 Section 18(b).

b. Should the Parties fail to resolve a dispute using the procedure set forth in Section 18(a) above, the Parties agree first to try in good faith to settle the dispute by mediation in a manner to be determined by the Parties. 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.

20. LIMITATIONS.

a. EXCLUSIVE REMEDIES - TO THE EXTENT THAT REMEDIES (BY WAY OF REIMBURSEMENT OF COSTS, REPLACEMENT OF GOODS, OR OTHERWISE) ARE SPECIFIED IN THIS AGREEMENT, SUCH REMEDIES SHALL CONSTITUTE FULL AND FINAL SETTLEMENT OF THE CITY'S LIABILITIES IN RESPECT OF THE RELATED DEFAULT. ST'S

RIGHTS AND REMEDIES ARE LIMITED TO THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND ARE IN LIEU OF ALL OTHER REMEDIES (AT LAW OR IN EQUITY OR OTHERWISE).

a. LIMITATION OF WARRANTIES - EXCEPT AS SET FORTH HEREIN THERE ARE NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE WARRANTY OF MERCHANTABILITY, NOR ANY AFFIRMATION OF FACT, OR PROMISE BY THE CITY, WHICH EXTEND BEYOND THE DESCRIPTION SET FORTH HEREIN; AND ST ACKNOWLEDGES THAT IT IS CONTRACTING SOLELY ON THE BASIS OF THE COMMITMENTS OF THE CITY EXPRESSLY SET FORTH HEREIN.

b. Limitation of Liability; Damages – In the event of a material default by either Party, the Parties agree that damages would be difficult to accurately ascertain, and therefore the Parties agree that the remedies shall be limited to, and the defaulting Party shall be liable for liquidated damages, and not as a penalty, the sum of \$25,000 per month . However, in no event shall the total damages pursuant to this Section exceed \$75,000, regardless of the remaining term of the Agreement.

c. THE PROVISIONS OF THIS SECTION SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS AGREEMENT.

21. 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. Venue for any litigation will be in Polk County, Florida, or the United States 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 Articles, Sections, 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 ST.

22. Confidentiality.

a. CITY agrees that it will not at any time, either while engaged hereunder by ST or afterwards, make any outside use of, or disclose to any other person or organization, except as authorized in writing by ST, or as compelled by lawful order or statute, any information, whether patentable or not, regarding plans, programs, facilities, designs, processes, products, costs, equipment, operations or customers of STI which comes within the knowledge of CITY in the performance of the work hereunder.

b. CITY recognizes and acknowledges that it may have access to certain confidential information of ST, and of corporations affiliated with ST, and that such information constitutes valuable, special and unique property of ST, and such other corporations. CITY will not, during or after the term of this Agreement, use or disclose any of such confidential information to any person, firm, corporation, association or other entity, except to authorized representatives of ST and corporations affiliated with ST, for any reason or purpose whatsoever, other than in furtherance of this Agreement. In the event of a breach or threatened breach by CITY of the provisions of this Article 23, ST, and corporations affiliated with ST, shall be entitled to an injunction restraining CITY from using or disclosing, in whole or in part, such confidential information. Nothing herein shall be construed as prohibiting ST, and corporations affiliated with ST, from pursuing any other remedies available to them for such breach or threatened breach, including the recovery of damages from CITY.

c. The obligations of this Article 23 do not apply to information which: (a) is or becomes part of the public domain without the breach of any obligation of confidentiality owed to ST or the corporations affiliated with STI; (b) is lawfully in the possession of CITY at the time it was acquired hereunder without the breach of any obligation of confidentiality owed to ST or the corporations affiliated with ST; or (c) is required under law to be disclosed, including but not limited to Florida Statute Chapter 119 the Florida Public Records Act.

d. Public Records. **IF ST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ST'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, ST 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, ST 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. ST 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 ST does not transfer the records to the CITY. ST shall, upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of ST or keep and maintain public records required by the CITY to perform services pursuant to the contract. If ST transfers all public records to the CITY upon completion of the contract, ST shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ST keeps and maintains public records upon completion of the contract, ST 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below but it is effective as of the Effective Date:

THE CITY OF LAKELAND

SEPARATION TECHNOLOGIES LLC

By: _____
H. William Mutz
Mayor

By: _____
Randy Dunlap, President

Attest: _____
Kelly S. Koos
City Clerk

Attest: _____

Its: _____

Date: _____

Date: _____
(Corporate Seal)

APPROVED AS TO FORM AND CORRECTNESS:

Palmer C. Davis, City Attorney

EXHIBIT A to that certain Contract between the City of Lakeland, Florida (CITY) and Separation Technologies, LLC (ST) dated June 15, 2020.

QUALITY CONTROL PROGRAM

The CITY will perform the following functions of the Quality Control Program:

Fly Ash

Sampling

1. Meet the minimum sampling and testing frequency established by ASTM C 311. This standard requires a minimum of one representative sample daily or for every 400 tons shipped, whichever comes first. The sample shall be collected from what is or would be loaded into trucks that day. The minimum sample size is 4 pounds.
2. Prepare and blend a representative composite of daily samples for each 3,200 tons shipped or a monthly sample, whichever comes first. The minimum sample size is 9 pounds.
3. Collect other samples as required by ST, the Florida DOT or other agencies.

Testing

1. Each daily or every 400 tons shipped sample must be tested for moisture, loss on ignition, and fineness as per ASTM C 311.
2. All test data shall be recorded and furnished to ST upon request.

Control Limit Notification

Notify ST immediately if the following control limits are exceeded:

- Moisture 0.5 %
- Loss On Ignition 5 %
- Fineness, % Retained on No. 325 Sieve 25 %

Cease Shipment:

Notify ST immediately and promptly cease shipment unless otherwise instructed by ST if the following control limits are exceeded:

- Moisture 3%
- Loss on Ignition 6%
- Fineness, % Retained on No. 235 sieve 34%

Record Keeping

Keep the following records for a minimum of three (3) years:

- All fly ash testing results on grab samples
- Fly ash produced each month
- Fly ash disposed each month
- Unit outage time
- Shipments and certification of ash

Sample Retention

- Keep the following samples for 90 days after test results have been reported
- Each grab sample (4 pound split)
- Each composite sample (8 pound split)

Bottom Ash

Sampling

- One (1) grab sample will be collected for the first truck loaded every week.
- Collect and ship other samples as required by the Florida DOT or other agencies

Testing

- Test each grab bottom ash sample for moisture only
- All test data shall be managed the same as fly ash above

Record Keeping

Keep the following records for a minimum of three (3) years:

- All bottom ash testing results on grab samples
- Bottom ash produced each month
- Bottom ash disposed each month
- Unit outage time
- Shipments and certification of ash

Sample Retention

- Keep the following samples for 45 days after test results have been reported
- Each grab sample (4 pound split)

EXHIBIT B to that certain Contract between the CITY of Lakeland, Florida (CITY) and Separation Technologies LLC (ST) dated June 15, 2020.

SAFETY REQUIREMENTS

The following safety requirements are comprehensive in nature with some site specificity; therefore, not all sections are applicable to every Contract. Please apply those safety requirements as site or situation dictates.

I. GENERAL

- A. ST and its Customers shall comply with all Federal/State Occupational Safety and Health Act (OSHA) Standards and any other rules and regulations applicable to construction and/or maintenance activities in the State of Florida. ST and its Customers shall also comply with county, city, or any other agency's rules and regulations regarding safety.
- B. The CITY's safety personnel or any CITY supervisor may order that the work be stopped if a condition of immediate danger is found to exist. Nothing contained herein shall be construed to shift responsibility or risk of loss for injuries or damage sustained as a result of a violation of this Article from ST and its Customers to the CITY; and ST shall remain solely and exclusively responsible for compliance with all safety requirements and for the safety of all persons and property at the project site.
- C. The Parties hereto expressly agree that the obligation to comply with applicable safety provisions is a material provision of this Contract and a duty of ST. The CITY reserves the right to require demonstration of compliance with the safety provisions of this Contract. The Parties agree that such failure is deemed to be a material breach of this Agreement; and the Contractor agrees upon such breach, all work pursuant to the Contract shall terminate until demonstration to the CITY that the safety provisions of this Agreement have been complied with. In no event shall action or failure to act on the part of the CITY be construed as a duty to enforce the safety provisions of this Agreement, nor shall it be construed to create liability for the CITY for any act or failure to act in respect to the safety provisions of this Agreement.

II. SAFETY EQUIPMENT

CITY's safety regulations will be strictly adhered to and enforced by the City of Lakeland Safety Division, which may include work stoppage or removal of Contractor and/or personnel. These safety regulations include, but are not limited to:

- A. All persons on CITY's property will wear industrial safety glasses with affixed side shields at all times, except when in an office building or construction trailer, in the enclosed cab of a motor vehicle, or during a break period when all work has stopped.
- B. All persons on CITY's property will wear an approved hard hat in good repair at all times, except when in an office building or construction trailer, in the enclosed cab of a motor vehicle, or during a break period when all work has stopped. Bump hats, or "cowboy style" hard hats are not acceptable at any time.
- C. All persons on CITY's property and in an area where the noise level exceeds 85 db, must wear hearing protection that complies with ANSI S3.19-74 (ear muffs and/or approved ear plugs with an NRR of at least 30). This includes areas where noisy equipment is in use (i.e. jack hammers, electric or air drills, heavy equipment with open cabs, pipe cutting saws, etc.) and in a plant environment where posted.
- D. Sport or athletic-type style shoes are NOT considered a suitable work shoe and are not acceptable as work shoes at this location
- E. Any person on CITY property, in an area where tools are being used that cause or may cause flying particles or an area where there is a potential of excessive dust or airborne particles, must wear, in addition to and over their industrial safety glasses, either soft-sided goggles or a full face shield/protector, and the appropriate respiratory protection equipment.
- F. Where vehicular and/or pedestrian traffic is affected:
 - 1. Maintenance of Traffic

ST and its Customer shall conduct its work so as to interfere as little as possible with public travel, whether vehicular or pedestrian. Whenever it is necessary to cross, obstruct, or close roads, driveways, and walks, whether public or private, ST and its Customer shall, at his own expense, provide and maintain suitable and safe detours or other temporary expedients for the accommodation of public and private travel, and shall give reasonable notice to owners of private drives before interfering with them. Such maintenance of traffic will not be required when ST and its Customer has obtained permission from the owner and tenant of private property, or from the authority having jurisdiction over public property involved, to obstruct traffic at the designated point.
 - 2. Barricades and Lights

All streets, roads, highways, and other public thoroughfares, which are closed to traffic, shall be protected by effective barricades on which shall be placed acceptable warning signs. Barricades shall be located at the nearest intersecting public highway or street on each side of the blocked section and all other positions required by applicable standards.

All barricades and obstructions shall be illuminated by means of warning lights from sunset to sunrise. Materials stored upon or alongside public streets and highways shall be so placed, and at the work at all times shall be so conducted, as to cause the minimum obstruction and inconvenience to the traveling public.

All barricades, signs, lights, and other protective devices shall be installed and maintained in conformity with applicable statutory requirements and, where within railroad and highway rights-of-way, as required by the authority having jurisdiction there over.

All ST owned or controlled vehicles and/or equipment which will be operated on or within ten (10) feet of the roadway will be equipped with a minimum of one amber 360 degree Class I warning device. This device must meet minimum standards for utility construction purposes such as a minimum of 500,000 candlepower and visible from 360 degrees of mounting. The warning device(s) must be in operation at all times that a vehicle/equipment is on the roadway or within the ten (10) feet of runoff area and not in a "normal" travel status.

All personnel, when working within fifteen (15) feet of the roadway, for fifteen (15) minutes or more must wear approved FDOT reflective vests.

3. Damage to Existing Property

ST will be held responsible for any damage to existing structures, work, materials, or equipment because of his operations and shall repair or replace any damaged structures, work, materials, or equipment to the satisfaction of, and at no additional cost to, the CITY, unless otherwise addressed in the Contract.

III. TOXIC SUBSTANCES

ST shall be responsible for compliance any and all Federal, State or Local Right-To-Know-Law for its employees and the employees of any and all Subcontractors the Contractor brings on or causes to be on the project site, inclusive of pesticides and/or herbicides.

ST shall, between receiving the Contract and coming on the project site to begin work, provide the CITY's field representative with affidavits and/or training documents stating that ALL personnel the ST brings on, or causes to be on the project site, have been given training or possess the appropriate licenses (if required) on any toxic substances said personnel will be working with or may be exposed to while working at the job site.

ST shall provide/give to the CITY's field representative a copy of manufacturer's MSDS for ANY and ALL "Toxic Chemicals" used by or brought on the project site by ST and its Customer or Subcontractor prior to the substance(s) being delivered to the CITY's property.

ST and its Customer and/or Subcontractor must be provided MSDS(s) which is / are in the possession of the CITY upon receipt of a written request. The CITY may establish reasonable procedures for acting upon such requests to avoid interruption of normal work operations.

Before any work shall begin, ST and its Customer shall arrange a meeting to advise CITY's field representative about safety and any dangers CITY employees will be subjected to, due to the presence of chemicals on the project site.

IV. PLANT SITE EMERGENCY CONDITIONS

In the event that ST or its Customer is working at the Plant and a site emergency condition (i.e. major fire, hazardous fluid/gas leak, bomb threat, etc.) occurs, ST and/or its Customer shall follow all instructions issued by the CITY. Upon notification of plant site emergency, ST and its Customer and all employees shall evacuate to the contractor's parking lot. The CITY will issue further instructions to ST and/or its Customer indicating when ST and/or its Customer may return to the plant site.

ST and its Customer shall insure that their personnel are made aware of the presence of **anhydrous ammonia**. This employee awareness must include chemical properties, site, sound and symptoms related to exposure and the emergency signal and procedure used at the facility in the event of a release.