

**NON-EXCLUSIVE CONTRACT
FOR THE TREATMENT AND DISPOSAL OF LEACHATE WATER**

THIS NON-EXCLUSIVE CONTRACT for the treatment and disposal of leachate water ("Contract") is made and entered into by and between Delta Pioneer, Inc., a Florida Corporation, hereinafter referred to as the "Firm," and the City of North Port, Florida, an incorporated municipality located in the State of Florida, hereinafter referred to as the "City."

NOW, THEREFORE, for and in consideration of the mutual covenants specified herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. TERM

This Contract is effective on the date the last party ratifies and approves it, and will remain in full force and effect for a term of two years unless otherwise terminated as provided for herein.

2. USE OF CITY'S WASTEWATER TREATMENT FACILITY

Subject to the provisions of this Contract, the City will accept leachate water from the Firm at the City's wastewater treatment facility, located at 5355 Pan American Boulevard, North Port, Florida (the "Facility"). The City's acceptance of leachate water from the Firm, and the use of the Facility to treat and dispose of the Firm's leachate water, are subject to the rules and regulations provided by Chapter 78 of the Code of the City of North Port, Florida; the Florida Department of Environmental Protection; the Federal Environmental Protection Agency; and any other governmental agency having authority over the treatment and disposal of leachate water, the Firm, or the Facility.

3. DELIVERY

The Firm must notify the Facility superintendent and Water and Wastewater Manager at least 24-hours before the Firm intends to deliver leachate water to the Facility for treatment or disposal. Notice must include the estimated quantity of leachate water to be disposed and the proposed delivery schedule.

4. TRANSPORTATION AND DISCHARGE

The Firm is responsible for transporting its leachate water to the Facility, and for all leachate water discharged into the Facility under the terms of this Contract. The City will direct the Firm to the Facility discharge location designated for the discharge of the Firm's leachate water.

5. RIGHT OF REFUSAL

At any time and before leachate water can be transferred into the Facility, the City may require additional pre-treatment or an additional restriction, or may refuse to accept any portion of the Firm's leachate water, where test results indicate, or the City reasonably believes, that any one of the following exist:

- A. The leachate water contains contaminants which could prove detrimental to the operational efficiency and effectiveness of the Facility or that are in violation of any Federal or State permitting requirements;

- B. The City is unable to adequately treat the Firm's leachate water in accordance with the Facility's Federal or State operating permits;
- C. The Firm fails to timely provide current testing and sampling results as required in Section 6; or
- D. Any other reason where the Facility superintendent and Water and Wastewater Manager believe that acceptance is not in the best interest of the City.

6. CONCENTRATION

The Firm's leachate water quality concentrations must be no greater than normal wastewater, having an average concentration of suspended solids and biochemical oxygen demand ("BOD") of not more than 250 milligrams per liter ("mg/L"), total phosphorus of not more than 15 mg/L, and total Kjeldahl nitrogen of not more than 400 mg/L.

7. TESTING AND SAMPLING

- A. The City may test or sample the Firm's leachate water at any time during its transfer into the Facility or the City's wastewater system.
- B. The Firm must test its leachate water quarterly for the constituents in compliance with Exhibit "A," attached and incorporated into this Contract, and provide all test results to the City within five business days of receipt.
- C. The Firm must test its leachate water as required by its operating permit, and provide all test results to the City within five business days of receipt.
- D. Additional samples, testing, monitoring points, or parameters may be required based on need or operational changes of either party.

8. FEES AND PAYMENT

- A. The Firm must pay the City:
 - 1. \$0.04 per gallon of leachate water transferred to the Facility for treatment and disposal.
 - 2. Reimbursement for the full cost of annual sludge testing required for the City to maintain its Federal and State wastewater treatment operating permits.
 - 3. Reimbursement for the full cost of analyzing the Firm's leachate water as required for the City to comply and maintain its Federal and State wastewater treatment operating permits.
- B. The City must provide an invoice to the address provided in section 9 of this Contract. Payment and/or reimbursement is due to the City no later than 30 days from the date appearing on the invoice.

9. TERMINATION

- A. The City Manager or the Firm may terminate this Contract, for any or no reason, by providing the other party with written notice at least 30 days before the date of termination.
- B. The City Manager may terminate this Contract immediately and without prior notice to the Firm if the City Manager determines that termination is in the City's best interest.

10. NOTICE

All notices and demands must be in writing delivered by United States Postal Service, registered or certified mail, return receipt requested, or by overnight carrier and are deemed to have been duly delivered when deposited with a carrier, postage and delivery prepaid, and addressed as follows:

For the Firm: Delta Pioneer, Inc.
James Scott
3629 Mineola Drive
Sarasota, Florida 34239

For the City: City of North Port, Florida
Attn: Utilities Director
6644 West Price Boulevard
North Port, Florida 34291

With copies of notices and demands to: City of North Port, Florida
Attn: City Attorney's Office
4970 City Hall Boulevard
North Port, Florida 34286

or to such other persons or places as a party designates by giving written notice to the other party.

11. INDEMNIFICATION

- A. TO THE EXTENT PERMITTED BY FLORIDA LAW, THE FIRM ASSUMES ALL LIABILITY FOR, AND RELEASES AND AGREES TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY, ITS COMMISSIONERS, OFFICERS, AGENTS, AND EMPLOYEES, FROM ALL LIABILITIES, FINES, CLAIMS, ASSESSMENTS, SUITS, JUDGMENTS, DAMAGES, LOSSES AND COSTS, INCLUDING CONSEQUENTIAL, SPECIAL, INDIRECT, AND PUNITIVE DAMAGES, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS, WHETHER SUCH FEES AND COSTS ARE INCURRED IN NEGOTIATIONS, AT THE TRIAL LEVEL OR ON APPEAL, OR IN THE COLLECTION OF ATTORNEYS' FEES), ARISING OUT OF ANY ACTS, ACTIONS, BREACHES, NEGLIGENCE OR OMISSIONS OF THE FIRM, OR FIRM'S OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE FIRM IN THE PERFORMANCE OF, OR THE FAILURE TO PERFORM, THE CONTRACT. THE CONTRACT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.
- B. THE CITY MUST PROVIDE ALL AVAILABLE INFORMATION AND ASSISTANCE THAT THE FIRM MAY REASONABLY REQUIRE REGARDING ANY CLAIM. IN THE EVENT OF A CLAIM, THE CITY MUST PROMPTLY NOTIFY THE FIRM IN WRITING BY PREPAID CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR BY DELIVERY THROUGH ANY NATIONALLY RECOGNIZED COURIER SERVICE (SUCH AS

FEDERAL EXPRESS OR UPS) WHICH PROVIDES EVIDENCE OF DELIVERY, AT THE ADDRESS PROVIDED FOR RECEIPT OF NOTICES IN THIS CONTRACT.

- C. THE INSURANCE COVERAGE AND LIMITS REQUIRED IN THIS CONTRACT MAY OR MAY NOT BE ADEQUATE TO PROTECT THE CITY AND SUCH INSURANCE COVERAGE WILL NOT BE DEEMED A LIMITATION ON THE FIRM'S LIABILITY UNDER THE INDEMNITY PROVIDED IN THIS SECTION. IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).
- D. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES, AND IMMUNITIES OF THE CITY AS SET FORTH IN FLORIDA STATUTES, SECTION 768.28.
- E. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS CONTRACT.

12. REMEDIES

In the event of a default or breach of the Contract terms, the City may avail itself of each and every remedy specifically given to it now existing at law or in equity, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise, or the beginning of the exercise, of one remedy shall not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy. The City's rights and remedies as set forth in this Contract are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

13. INSURANCE

- A. Before the City will accept any of the Firm's leachate water, the Firm must procure and maintain, during the life of this Contract, the insurance listed below, unless otherwise specified. The policies of insurance must be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the Insurance Department of the State of Florida, and meet a minimum financial AM Best and Company rating of no less than "Excellent."
- B. No changes are to be made to these specifications without the City Manager or designee's prior written approval. The City Manager or designee may alter the amounts or types of insurance policies required by this Contract upon agreement with the Firm.
 - 1. Workers' Compensation. Coverage to apply for all employees for Statutory Limits in compliance with the applicable State and Federal laws. The policy must include Employers' Liability with a limit of \$500,000 each accident; \$500,000 each employee; and \$500,000 policy limit for disease.
 - 2. Commercial General Liability. Occurrence form required. Aggregate must apply separately to this contract/job. Minimum \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products and completed ops; and \$100,000 damage to rented premises.

3. Commercial Automobile Liability. To include all vehicles owned, leased, hired and non-owned vehicles with limits of not less than \$1,000,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Contract.
 4. Environmental/Pollution Liability. A Pollution Liability policy is required with minimum limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate. Occurrence form is required.
- C. Additional Requirements.
1. The City of North Port, Florida must be named as additional insured on Comprehensive Commercial General Liability Policy and the Commercial Auto Policy.
 2. The Certificate of Insurance must include the following:

In the "Description of Operations/Special Provisions" section: "City of North Port is named as an additional insured, as their interests may appear on Commercial General Liability and Commercial Auto Policy."

In the "Certificate Holder" section: "City of North Port, 4970 City Hall Boulevard, North Port, FL 34286"
 3. All certificates of insurance must be on file with and approved by the City before commencement of any work activities under this Contract.
 4. Any and all deductibles to the above referenced policies are the responsibility of the Firm. Renewal certificates must be sent to the City thirty business days prior to any expiration date. There is a 30 business day notification to the City in the event of cancellation or modification of any stipulated insurance coverage. It is the responsibility of the Firm to ensure that all its subcontractors comply with the same insurance requirements that the Firm is required to meet.

14. MISCELLANEOUS

- A. Authority to Execute Contract. The signature by any person to this Contract shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.
- B. Binding Effect/Counterparts. By the signatures affixed hereto, the parties intend to be bound by the terms and conditions hereof. This Contract is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns. It may be signed in counterparts.
- C. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Contract. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Contract are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida.

- D. No Agency. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the parties, it being understood and agreed that no provision contained herein, or any acts of the parties shall be deemed to create any relationship between them other than that as detailed herein.
- E. Severability. In the event any court shall hold any provision of this Contract to be illegal, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed as a waiver of a subsequent breach by the other party.
- F. Headings. The descriptive titles appearing in each respective paragraph thereof are for convenience only and are not a part of this Contract and do not affect its construction.
- G. Complete Agreement. This Contract incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the parties, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document. This Contract supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.
- H. Amendment. No amendment, change, or addendum to this Contract is enforceable unless agreed to in writing by both parties and incorporated into this Contract. The City Manager or designee may agree to amendments that do not decrease the amount of fees or reimbursements provided in section 7.
- I. Assignment. The Firm must not assign this Contract or any right or responsibility herein unless with the express written consent of the City.
- J. Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities, or services. The Firm shall not administer this Contract in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

(Signatures to follow on next page.)

IN WITNESS WHEREOF, the parties have approved and ratified this Contract as of the dates appearing below.

Executed by the Firm on APR 17, 2020.

DELTA PIONEER, INC.

By: James Scott
Name: JAMES SCOTT
Title: VP-CO-OWNER

STATE OF FLORIDA
COUNTY OF SARASOTA

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 17 day of APRIL 2020 by JAMES SCOTT, on behalf of Delta Pioneer, Inc. in their capacity as VP-CO-OWNER.

Kathlene C Hohns
Notary Public - State of Florida

Personally Known OR Produced Identification
Type of Identification Produced _____



Approved by the City Commission of the City of North Port, Florida on _____, 2020.

CITY OF NORTH PORT, FLORIDA

By: _____
Peter D. Lear, CPA, CGMA
City Manager

ATTEST

APPROVED AS TO FORM AND CORRECTNESS

Heather Taylor, CMC
City Clerk

Amber L. Slayton
City Attorney

EXHIBIT A

Non-Exclusive Leachate Disposal Contract Constituents for Sampling

The Firm will test for the following constituents in order for the City to accept leachate water for treatment and disposal at the City's wastewater treatment facility. All leachate water samples will be collected directly from the delivery vehicle. Measurements are shown in mg/l unless otherwise noted or as required by the Florida Department of Environmental Protection.

QUARTERLY TESTING WILL DETERMINE LEVELS OF THE FOLLOWING:

1. Biochemical Oxygen Demand (BOD)
2. Dissolved Oxygen (DO)
3. Total Suspended Solids (TSS)
4. Total Kjeldahl Nitrogen (TKN)
5. NR4
6. Chemical Oxygen Demand (COD)
7. Arsenic
8. Cadmium
9. Chromium
10. Cooper
11. Selenium
12. Silver
13. Lead
14. Mercury
15. Molybdenum
16. Nickel
17. Zinc

Conventional Parameters:

Conductivity (umho/cm)	Iron
Total Organic Carbon	Manganese
Nitrate Nitrogen	Nickel
Sulfate	Strontium
Sulfide	Cyanide
Chlorides	Dissolved Oxygen
Total Phosphorous	Fluoride
Oxidation-Reduction Potential (Mv)	Total Nitrogen
Sodium	Organic Nitrogen
Potassium	Phosphates
Calcium	Aluminum
Magnesium	Boron
Silver	Antimony
Elemental Phosphorus	Bromine
Barium	Bromates
Aluminum Oxide	

Volatile Organic Compounds:

Benzene
Ethylbenzene
O-Xylene
Total BTEX
¼ Ethyltoluene
1,3,5 Trimethylbenzene
1,2,3 Trimethylbenzene
Vinyl Chloride
Trans -1, 2-Dichloroethene
Trichloroethene
N-Propylbenzene
2-Propanol
Chlorobenzene
1,1,1-Trichloromethane

Toluene
M.P. Xylene
Total Xylene
2-Ethyltoluene
Total Toluene
1,2,4 Trimethylbenzene
Total Trimethylbenzene
1,1-Dichloroethane
Carbon Tetrachloride
Perchloroethene
Isopropylbenzene
Tetrahydrofuran
1,4-Dichlorobenzene

Phenolic Compounds:

Chlorinated Phenols
Chlorinated Cresols
2,4-Dichlorophenol
2,4-Dinitrophenol
Polychlorinated Biphenyl's

Trichlorophenols
2-Chlorophenol
Pentachlorophenol
Phenol

Pesticides:

Aldrin
Chlordane
Demeton
Endrin
Heptachlor
Malathion
Mirex

Dieldrin
DDT
Endosulfan
Guthion
Lindane
Methoxychlor
Parathion