

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: November 18, 2019

**RE: Agreement with Manny's Bulk Express, Inc. for
Transportation and Delivery of Limestone**

Attached hereto for your consideration is an Agreement with Manny's Bulk Express, Inc. (Manny's) for the transportation and delivery of 40,000 tons of limestone from Lhoist North America located in Ocala, Florida and Vulcan Materials Company, with Florida locations in Brooksville and Tampa, to Lakeland Electric's McIntosh Power Plant for Unit 3. The limestone is used to make slurry for Unit 3's scrubber to clean the emissions from the stack that go into the air.

In 2018, the City entered into agreements with Lhoist North America and Vulcan Material Company to supply limestone for use in Unit 3's operations. Those agreements included transportation by Manny's. However, both vendors have now agreed to enable the City to take responsibility for transportation and delivery of the limestone by Manny's under a separate agreement. By separating the transportation and delivery of limestone from the City's existing supply agreements the City is anticipated to save approximately \$107,500 in FY20.

The term of this Agreement, effective November 18, 2019, upon City Commission approval, will continue through September 30, 2020. Pursuant to the Agreement, all hauling rates are guaranteed as flat rates and thereby not subject to demurrage or fuel surcharges. The transportation rate of powder limestone from Ocala to the McIntosh Plant is \$16.85 per ton. The transportation rate from Brooksville to the McIntosh Plant is \$15.55 per ton. To transport peddle rock stone limestone from Tampa to the McIntosh Plant is \$7.50 per ton. The maximum total cost for transporting and delivering limestone will be approximately \$674,000 during the term of this Agreement, which is included in Lakeland Electric's FY2020 Fuel Budget.

It is recommended that the City Commission approve the purchase and that the appropriate City officials be authorized to execute this Agreement with Manny's for the transportation and delivery of limestone on behalf of the City.

attachment

TRUCKING AGREEMENT

This Trucking Agreement ("Agreement") is made and entered into as of this 18th day of November 2019 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 ("City") and Manny's Bulk Express, Inc., a Florida corporation having its principal place of business at 3808 South 66th Street, Tampa, Florida 33619 ("Contractor"). Each of City and Contractor may sometimes hereinafter be referred to individually as a "Party" and collectively as the "Parties."

RECITALS:

A. City desires to engage Contractor to perform certain services and work, relating to the operations at City's McIntosh Power Plant site located at 3030 Lake Parker Drive, Lakeland, Florida ("Job Site"), and Contractor agrees to accept such engagement and to perform such services upon the terms and conditions set forth herein;

B. The City has limestone suppliers for power and 67 stone with Lhoist North America of Tennessee, Inc. that will result in the delivery of L90-200K limestone to C.D. McIntosh Power Plant from FOB Lowell Plant, 11661 N.W. Gainesville Road, Ocala FL, and Vulcan Materials Company for limestone power and 67 stone with two loading locations of 14566 Ponce De Leon Blvd, Brooksville, FL 34614 and 2001 Maritime Blvd, Tampa, FL 33605 during the term of this Agreement; and

NOW, THEREFORE, in consideration of the Parties' covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Services to Be Performed by Contractor

a. Contractor shall perform all services and work as set forth, and in accordance with the terms, conditions, and obligations set forth in the Scope(s) of Work executed by the Parties, each of which will be deemed to be consecutively attached as Attachment A hereto, and as otherwise requested by City (such services and work being referred to herein as the "Work"). Contractor shall provide and furnish all labor, equipment, services, supervision and administration necessary for the proper and complete provision of the Work by Contractor and acceptance of the Work by City. Contractor shall comply with all applicable laws and governmental regulations, as well as policies and regulations of City, in the performance of the Work.

b. The "Contract Documents" consist of this Agreement and each attachment, exhibit and schedule attached hereto;

c. Contractor shall be paid a fee for the satisfactory performance of the Work as set forth in the Scope(s) of Work hereto (the "Fee").

d. All invoices shall be submitted to the attention of the Fuels Department at Fuelinvoices@Lakelandelectric.com or to Lakeland at 501 East Lemon Street, Lakeland, Florida 33801.

e. Invoices shall be in a form satisfactory to the City and be of sufficient detail to provide the City all reasonable information necessary to confirm their accuracy. Payment of each invoice shall be made by ACH or check payable to the Contractor within forty-five (45) days after receipt of invoices in accordance with Florida Statute 218.74 et. seq., the Local Government Prompt Payment Act. All such invoices shall have the Purchase Order number listed and the price per ton times the individual truck's load with the ticket number listed. City's obligations to pay for limestone delivered to City shall survive the expiration or termination of this Agreement. ACH form is located at <http://www.lakelandgov.net/Portals/Finance/AP/2015ACHAuthorization.pdf>

f. Notwithstanding any provision hereof to the contrary, City shall not be obligated to make any payment (whether an interim payment or final payment) to Contractor hereunder if any one or more of the following conditions precedent exist.

- i. Contractor is in default of any term, condition or obligations under the Contract Documents;
- ii. Any part of such payment is attributable to Work which has not been performed in accordance with the Contract Documents; provided, however, such payment shall be made as to those amounts in the invoice that are not subject of a dispute;
- iii. If City, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the outstanding Work in accordance with the Contract Documents, no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the outstanding Work so that such portion of the compensation then remaining unpaid is determined by City to be sufficient to so complete the outstanding.

g. No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Work to which such partial payment relates or relieve Contractor of any of its obligations under the Contract Documents.

2. Term, Performance, Change Orders and Termination

a. The term of this Agreement ("Term") shall commence on November 18, 2019 ("Effective Date") and shall expire September 30, 2020 unless terminated earlier in accordance with the provisions of this Agreement.

b. TIME IS OF THE ESSENCE in the performance of the Work under the Contract Documents.

c. Contractor recognizes that it is of paramount importance that Contractor performs the Work consistent with the Contract Documents. Therefore, should Contractor fail or refuse to keep or perform any obligation of Contractor in accordance with the Contract Documents or any other agreement(s) with City, and such failure shall remain uncorrected for a period of three (3) days after written notice from City specifying the obligations Contractor has failed or refused to keep or perform, City may at that time, at its option, elect to terminate this Agreement, all Scopes of Work and any other agreement(s) between City and Contractor upon written notice to Contractor, whereupon this Agreement, all Scopes of Work and any other agreement(s) between City and Contractor shall terminate and City may seek all available remedies at law or in equity, including, but not limited to, the right to engage another subcontractor to complete the Work.

d. The scope of and conditions, specifications and/or quantities ordered applicable to the Work shall be subject to change by City from time to time. Such changes shall only be enforceable if documented in a writing executed by City. Except as otherwise specifically set forth in this Agreement, changes in the scope of or conditions, specifications and/or quantities ordered applicable to the Work may result in adjustments in the Fee to be paid to Contractor and/or the Schedule in accordance with this section. City shall not be bound to any adjustments in the Fee or the Schedule unless expressly agreed to by City in writing. City will not be liable for, and Contractor waives, any claims of Contractor that Contractor knew or should have known and that were not reported by Contractor in accordance with the provisions of this Section.

e. City may request copies of licenses for all drivers performing services in accordance with this Agreement.

f. Contractor's drivers are required to conduct themselves in a professional manner, complying with all applicable rules and regulations of the limestone drop off area and the City of

Lakeland when on City property. City reserves the right to prohibit any drivers that fail to comply with the applicable rules and regulations from performing services in accordance with this Agreement and may, at the sole discretion of the City, terminate its Agreement with Contractor following any breach of said rules and regulations.

g. City may terminate this Agreement (for any reason or for convenience) or temporarily suspend Subcontractor's performance of the Work under the Contract Documents (for any reason or for convenience) upon written notice to Subcontractor. Any such notice of termination or suspension will be effective seven (7) days after the date such notice is provided to Contractor. Upon such termination, Contractor will have no further obligation to perform the Work hereunder. City will pay Contractor for all Work performed and accepted by City consistent with the Contract Documents up to the effective date of the notice. City shall have no obligation to pay Contractor for any Work performed after the effective date of the notice. Contractor shall have no claim against City for damage or loss, including lost revenue or profits, as a result of the termination of this Agreement or suspension of the Work.

h. If Contractor violates the terms of this Agreement, including all exhibits thereto, including Lakeland Electric Solicitation for Limestone Bid No. 8136 or the directives of the City's authorized representatives, the City reserves the right to terminate this Agreement.

3. Contractor Requirements

a. As used in this Agreement, "Contractor Representative" means Contractor's employees, Contractor's agents, its subcontractors, consultants, suppliers, vendors, materialmen, or any person, entity, or other third party used in connection with the Work, and the employees of each of the foregoing.

b. Contractor shall make deliveries transporting Lakeland's limestone, operating on a seven (7) day week consisting of the days Monday - Sunday, allowing 24-hour access to final destination of C. D McIntosh Plant. Starting loading point is listed under Attachment A.

c. Contractor shall comply and shall cause all Contractor Representatives to comply, in all respects with the Contract Documents.

d. Repair and/or maintenance of Contractor's equipment at the Job Site are strictly prohibited. If any repair or maintenance is necessary, Contractor's equipment must be removed from the Job Site.

e. Contractor and all Contractor visitors must sign-in with City guard station upon arrival to the Job Site and provide the bill of lading invoice prior to unloading any limestone.

f. Contractor shall not be permitted at the Job Site unless an authorized City employee is present. No Work is to be performed unless such City employee is present and observing Contractor. In addition, and in accordance with City's policy, at no time will Contractor work alone at the Job Site. For purposes of the policy, "alone" is defined as outside the line of sight of another individual for more than fifteen (15) minutes or without acceptable communication to another individual of an immediate and reliable nature such as a CB radio or two-way direct radio communication.

g. During the Term of this Agreement, Contractor must maintain a Workers Compensation Insurance Experience Modification Rate ("EMR") less than or equal to 1.0.

h. Contractor must promptly report to City's site manager all incidents that occur while Contractor is at the Job Site. Contractor's employees must submit to a post-accident drug screen if involved in an incident at the Job Site.

i. Contractor must comply with the Code of Federal Regulations Title 49 as it pertains to the U.S. Department of Transportation Federal Motor Carrier Safety Administration (FMCSA).

j. Contractor must have a Safety Profile completed by the Motor Carrier Management Information System (MCMIS) and be rated near or below national average standards.

k. Contractor's trucks must display on the outside of their power unit a means of showing a current annual inspection.

l. Contractor shall permit an authorized representative of City to conduct a spot check on any vehicle, maintenance file, driver's file and/or conduct random background checks on Contractor's drivers.

m. Drivers must be able to show proof they are legal to work in the United States of America.

n. Drivers must be able to communicate safety instructions, directions, and other vital information with staff on site (in English).

o. All trucks coming onto a City site may be subject to inspection and search.

p. Contractor must allocate a sufficient number of trucks, drivers and mechanics to the Work in order to timely and safely provide the transportation services required hereunder.

q. Contractor shall maintain, in good repair and in accordance with all local, state and federal laws, rules, regulations and ordinances now or hereafter in effect, all tractors, trailers, and other motor vehicles and related equipment furnished by Contractor in connection with the Work.

Contractor shall maintain all federal, state and local permits and licenses required for Contractor to lawfully perform the Work.

r. Contractor and Contractor's Representatives shall assume all risks associated with the performance of the Work including, without limitation, Work site conditions and transportation-related hazards such as weather, road conditions and environmental contamination. Contractor and Contractor's Representatives shall assume all risks and shall be responsible for all fines, penalties, costs and expenses relating to products and/or materials spilled during performance of the Work and the related reloading, removal and disposal of spilled products and materials.

s. Contractor's drivers are allowed to utilize City's truck washing facilities, which are drive-through only. Under no circumstances are the facilities to be used to hand-wash trucks. The use of chemicals, detergents, or other reagents and or materials for the purpose of cleaning trucks is not permissible on City's property. Use of City's property during unauthorized hours for such purposes as truck washing will constitute a breach of contract and will result in termination of the Agreement.

t. Contractor's drivers will observe posted speed limits during the delivery of limestone under this agreement and in the return trip from City's Job Site to either the Lhoist North America or to Contractor's facilities. Repeated failure to observe said speed limits or to drive too fast for conditions will constitute a breach of contract and will result in termination of the Agreement.

u. Notwithstanding anything to the contrary contained herein, Contractor is responsible for all loss or damage to cargo from the time it takes possession of the cargo until delivered to and accepted at the intended destination as evidenced by a delivery receipt signed by the intended recipient.

4. Contractor Representations and Warranties

Contractor represents and warrants that:

a. Contractor's incident rates for the three (3) most recent calendar years do not exceed, in any one (1) year, the industry average, based on NAISC (or SIC) as published by the Bureau of Labor Statistics.

b. Contractor has not experienced any employee fatality identified within any of the three (3) most recent calendar years' statistics.

c. Contractor has not received any citation from OSHA or any federal, state, or other local agency in the most recent three (3) calendar years.

d. Contractor has a current Workers Compensation Insurance Experience Modification Rate ("EMR") less than or equal to 1.0.

e. Contractor shall cause the Work to be performed (i) in a competent and professional manner consistent with industry standards, (ii) in compliance with all laws, statutes and regulations, and (iii) in compliance with all requirements and contents of the Contract Documents, including, without limitation, the Scope of Work, the Insurance Requirements, and the Safety Requirements.

f. Contractor has reviewed the Contract Documents and that it is full and complete, contains no errors, omissions or ambiguities, and is sufficient to have enabled Contractor to determine that the Work can be completed in accordance with all applicable laws, statutes, buildings codes and regulations.

g. Contractor has satisfied itself as to the accessibility, general character and physical conditions of the Job Site and the project, the nature and scope of the Work to be conducted at the Job Site and/or in connection with the project, the character of the equipment and facilities needed for the Work, the general and local conditions under which the Work is to be performed, and all other matters which could in any way affect the Work under the Contract Documents or the Fee.

h. All of the Work required to be performed by Contractor pursuant to the Contract Documents, is covered by and included within the Fee (subject to change orders requested and approved in writing by City).

i. Contractor will be liable for all its errors, if any, in judgment relative to the Work.

j. Contractor will call to City's attention anything of any nature in plans, instructions, information, requirements, procedures, and other data supplied to Contractor (by City or any other third party) which it regards in its professional opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such data is furnished.

k. Contractor's trucks, trailers and related equipment are registered, licensed, operated and maintained in accordance with all applicable laws, regulations and ordinances and its operators are properly licensed with all applicable federal, state and local governmental and administrative bodies.

5. Indemnity by Contractor

Contractor, its directors, officers, employees, agents, subcontractors and representatives agree to indemnify and save harmless City, its officials, officers, directors, employees, and representatives from any responsibility and liability for any and all claims, demands, losses (including reasonable attorney's fees at the trial and appellate level) arising out of or resulting from any negligence or willful misconduct related to the transportation, loading or unloading of limestone or failure to comply with any laws, regulations or ordinances, or which otherwise arise out of the acts of commission, omission, negligence or fault of the Contractor, its directors, officers, employees, agents, subcontractors and representatives.

6. Insurance

Contractor shall comply and shall cause its subcontractors, if any, to comply, with the insurance requirements of City attached hereto as Attachment B, as they relate to the Work to be performed by Contractor. Failure by Contractor or its subcontractors to provide and maintain current, valid certificates of

insurance throughout the performance period shall be a material breach of this Agreement for which City may exercise any rights or remedies it may have under this Agreement or at law, including the right to withhold moneys due and owing Contractor hereunder. Contractor shall provide, and shall cause its subcontractors to provide insurance naming City and any designated City affiliates, as additional insureds and waiving rights of subrogation against City and any designated City affiliates. Contractor shall submit evidence of such coverage to City prior to the start of Work under this Agreement.

7. Safety, Security & Environment

- a. Contractor and all of Contractor's Representatives who perform any of the Work hereunder must comply with the environmental, health, safety and security practices and procedures (including, without limitation, City's safety requirements) required by City (collectively, the "Rules".) The Rules may from time to time be modified, amended superseded or replaced by City and Contractor agrees to comply with such changes. Contractor will advise Contractor Representatives of the Rules and secure their consent to abide by the Rules. It is Contractor's responsibility to abide by and to stay current with and for Contractor and the Contractor's Representatives to comply with the Safety Manual and any and all changes thereto.
- b. The use, possession, or sale of narcotics, hallucinogens, depressants, stimulants, marijuana, or other controlled substances is prohibited on the Job Site, on City property and while performing work for City at other locations including public property or property owned by third parties. This does not apply to the use by a Contractor's Representative of medication prescribed by a licensed physician and taken in accordance with such prescription, provided such Contractor Representative complies with all requirements of City's Drug and Alcohol Policy. Consumption of alcohol on property where the Work is performed or while performing the Work is also prohibited. The use of the above substances or alcohol on or away from property where the Work is performed which adversely affects the employee's job performance, or may reflect unfavorably on public or governmental confidence in the manner in which City carries out its responsibilities, as determined by City, is also prohibited. Any Contractor or Contractor Representative found engaging in such activities described in this Section will be removed and permanently banned from the Job Site and all properties of City.
- c. City has the right, but not the obligation, to conduct an on-location environmental, health, safety and security audit of Contractor and/or each Contractor Representative at any time to verify compliance with federal, state and local statutes, regulations and ordinances as well as City specific requirements specified in the Contract Documents.
- d. No Contractor or Contractor's Representative shall possess a gun or firearm, knife, explosive device, or other implement that may be used to inflict bodily harm on a person at the Job Site or on City property at any time.
- e. Contractor acknowledges that by entry onto the Job Site, or any property of City, Contractor and all Contractor Representatives consent to search or inspection of all belongings and property at any time while on such property. Any Contractor or Contractor Representative found in violation of the Rules, or who refuses to permit a search or inspection as specified above, may be removed and barred from such property at the sole discretion of City.
- f. Contractor and City shall provide a list of appropriate contacts for the purpose of notifying the proper staff of any events of that might occur during the course of the contract and is identified as Attachment C.

8. Independent Contractor

The Parties shall perform all of their duties under the Contract Documents as independent contractors to one another, and nothing herein shall be deemed to cause the Contract Documents to create an agency, partnership, joint venture, co-ownership or otherwise participants in a joint undertaking. The Parties understand and agree that neither Party grants the other Party the power or authority to make or give any agreement, statement, representation, warranty, or other commitment on behalf of the other Party, or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of the other Party, or to transfer, release, or waive any right, title, or interest of such other Party.

9. Permits & Licensure

It is Contractor's responsibility to obtain, at its expense, all permits and licenses required to perform the Work. Contractor represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the Work under the Contract Documents. Upon request, copies of all permits and licenses shall be delivered to City.

10. Discrimination and Harassment

City is committed to providing a work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive, including sexual harassment. Actions, words, jokes or comments based on an individual's sex, race, color, national origin, age, religion, disability, sexual orientation or any other legally protected characteristic will not be tolerated and shall be grounds for the permanent removal of a Contractor's Representative.

11. Public Communications

Contractor will not make any statements, releases, photographs, or publicity concerning City, this Agreement or the Work to be performed hereunder without prior written approval of City. Requests for information from news reporters or government personnel regarding operations, limestone ash, or any other related issue should be immediately reported to authorized City personnel.

12. Attorneys' Fees

In the event litigation is instituted by either Party, then the prevailing Party shall be entitled to recover its reasonable costs and attorneys' fees incurred in such litigation.

13. Notice

Any notice required or contemplated to be given hereunder by any Party to the other shall be in writing and shall be delivered in person, by U.S. mail, registered or certified, postage pre-paid, return receipt requested, or by a nationally recognized courier, addressed to the Party at the following addresses (or such other email addresses as either shall have previously notified the other in writing):

If to City:

Ms. Tory Bombard, Fuels Manager
Lakeland Electric
501 East Lemon Street
Lakeland, Florida 33801
Tory.Bombard@lakelandelectric.com
863-834-6207(office)

If to Contractor:

Ms. Heather Estrada
Manny's Bulk Express, Inc.
3808 South 66th Street
Tampa, Florida 33619
Heather@mannybulkexpress.com
813-374-0246

All notices and other communications delivered hereunder shall be deemed given upon the earliest of (a) delivery in person, (b) one (1) business day after delivery to a nationally recognized courier service for next business day delivery, or (c) three (3) business days after deposit in the U.S. mail. As used in this Agreement, the term "business day" means each day of the week other than Saturdays, Sundays or other days of the week that constitute federal holidays under the laws of the United States of America.

14. Severability

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

15. Waiver

The failure of either Party to enforce at any time the provisions of this Agreement or to require at any time performance by the other Party of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Agreement or any part hereof, or the right of either Party to enforce each and every provision in accordance with its terms. To the extent a Party agrees in writing to waive an obligation other Party, such waiver shall not be deemed a waiver of similar or dissimilar provisions at the time or at any prior or subsequent time.

16. Choice of Law; Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to choice of law principles. All Parties hereto consent to the jurisdiction and venue of Courts of Polk County, Florida or United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Agreement.

17. Binding Effect

Each of the Parties represents and warrants that it has the legal power and authority to enter into this Agreement and that it has taken all action necessary to authorize its duly authorized representatives to execute this Agreement. The Contract Documents shall be binding upon and inure to the benefit of the Parties hereto, their heirs, permitted assigns and successors.

18. Subletting or Assigning Contract

Contractor may not assign, subcontract, sublet, or transfer this Agreement or any of the Work hereunder and/or any of its rights, duties and obligations hereunder without prior written consent of City. In the event Contractor desires to use a subcontractor in connection with the Work, Contractor must obtain the prior written consent of City for each such subcontractor. Any assignment without the consent of City shall be null and void. The general terms and conditions of this Agreement regarding the Work to be performed must be incorporated into and attached to any subcontract or assignment and Contractor shall cause each of its subcontractors and/or assignees, as applicable, to agree in writing to be bound by all the terms and conditions of the Contract Documents. Consent to subletting or assignment will not relieve Contractor of responsibility for the performance of its obligations in accordance with the terms and conditions of the Contract Documents and any amendments executed by both parties and Contractor shall remain primarily responsible for the Work and Contractor's obligations under the Contract Documents.

19. Counterparts

This Agreement may be executed in one or more counterparts, each of which when so executed and delivered, shall constitute an original, and all such counterparts shall together constitute one and the same instrument. Signatures delivered electronically or by facsimile shall be as binding as original signatures.

20. Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: 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, the Contractor 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, Contractor 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. Contractor 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 the Contractor does not transfer the records to the City. Contractor shall, upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform services pursuant to the contract. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

21. Entire Agreement; Amendment

This is the entire agreement between the Parties hereto concerning the subject matter hereof and supersedes all prior agreements, understandings or negotiations between the Parties. This Agreement may be amended or modified only by written document executed by authorized representatives of City and Contractor.

By signing below, the person executing the Agreement for Contractor and City warrants and represents that he or she is fully authorized to sign this Agreement on behalf of Contractor or City, as applicable, and that by virtue of his or her signature, Contractor and City are fully bound by the terms and conditions of the Contract Documents. The parties execute this Agreement by their signature or the signature of their authorized representative as of the date and year first above written.

City of Lakeland, Florida

Manny's Bulk Express, Inc.

By: _____

By: _____

Name: H. William Mutz

Name: Heather Estrada

Title: Mayor

Title: Chief Operations Officer

Date: _____

Date: _____

Attest

By: _____

Name: Kelly Koos

Title: City Clerk

Date: _____

Approved as to form and correctness:

Palmer C. Davis, Interim City Attorney

ATTACHMENT A

Scope of Work

Contractor will perform the following Work, in accordance with the Trucking Agreement and the terms and requirements below:

Term: November 18, 2019, to September 30, 2020.

Total Quantity: Average around 40,000 tons during the term, in accordance with a delivery schedule mutually agreed upon, in writing, on a monthly basis.

Schedule: The contractor will make deliveries transporting Lakeland's limestone, operating on a seven (7) day week consisting of the days Monday – Sunday with 24 hour McIntosh access, starting from loading point listed under Attachment A to the final destination of McIntosh Plant 3030 East Lake Parker Drive, Lakeland Florida.

Product: LimestonePower and 67 stone

Price and Loading Point

The Contractor will be paid a flat fee for the entire term of the Agreement subject to the satisfactory completion of the Work, and no demurrage or fuel surcharge will be charged to the city.

Lhoist Power hauled from Lhoist North America, 11661 N.W. Gainesville Road, Ocala FL 34482 the price is sixteen dollars and eighty-five cents (\$16.85) per ton delivered to McIntosh Plant.

Vulcan Power hauled from Vulcan Materials Company 14556 Ponce De Leon Blvd, Brooksville, FL 34614 for a flat fee of fifteen dollars and fifty-five cents (\$15.55) per ton delivered to McIntosh Plant.

Vulcan 67 stone hauled from Vulcan Materials Company 2001 Maritime Blvd, Tampa, FL 33605 for a flat fee of seven dollars and fifty cents (\$7.50) per ton delivered to McIntosh Plant.

Failure to move limestone timely constitutes a breach of this Agreement and subject to termination of the contract. The Contractor must have a fleet large enough to handle moving the limestone monthly during the term of this Agreement.

ATTACHMENT B

Contractor's Liability Insurance

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party's interests or liabilities, but are merely minimums.

"Except for workers' compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the City of Lakeland as additional insured. It is agreed that the Other Party's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

Except for workers compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

Commercial General Liability: This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Other Party's employees or damage to property of the City or others arising out of any act or omission of the Other Party 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 the Other Party under the article entitled INDEMNIFICATION, and "Completed Operations" coverage.

The Other Party is required to continue to purchase products and completed operations coverage for a minimum of three years beyond the City's acceptance of renovation or construction properties.

The liability limits shall not be less than:

Bodily Injury and Property Damage \$1,000,000 - Single limit each occurrence

Business Automobile Liability: Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

The liability limits shall not be less than:

Bodily Injury and Property Damage \$1,000,000 - Single limit 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 in Florida Statue 440, the Other Party will provide a copy of State Workers' Compensation exemption.

All subcontractors shall be required to maintain Worker's Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

ADDITIONAL INSURANCE

Additional Insurance: The City requires the following types of insurance.

Commercial Inland Marine or Ocean Marine liability: The applicable insurance shall provide for full replacement of property being transported, in the event the property is lost, damaged, or destroyed.

EVIDENCE/CERTIFICATES OF INSURANCE

Required insurance shall be documented in Certificates of Insurance which provide that the City shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the City at least fifteen (15) days prior to coverage renewals.

If requested by the City, the Other Party shall furnish complete copies of the Other Party's insurance policies, forms and endorsements.

For Commercial General Liability coverage the Other Party shall, at the option of the City, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.

ATTACHMENT C

Contractor Contact List

The following individuals representing Contractor are to be contacted in the event the circumstances below require:

Contractor's Contact, Name, title, email address, cell phone and direct telephone number

1. Manny Estrada, President, Cell (352) 650-1177, heather@mannysbulkexpress.com

In the Event a Driver is Unable to Communicate Sufficiently in English with Lakeland Electric staff, provide a contact for name and cell phone number for a Translator from Manny's Bulk Express, Inc.

1. Manny Estrada, Cell (352) 650-1177

City of Lakeland Contracts, Lakeland Electric Staff

1. Michael Koentop, Power Production Foreman, Michael.Koentop@lakelandelectric.com (863) 834-6697(office), (863) 352-667-3046 Cell-Limestone Staff
2. Ken Riddle, Sup. Of Chemical Process, Ken.Riddle@lakelandelectric.com (863) 834-5539 (Office), (863) 660-3626 Cell-Limestone Yard Staff
3. Tory Bombard, Fuels Manager, Tory.Bombard@lakelandelectric.com, (863) 834-6207(Office) (863) 604-2547 Cell-Administrative staff