

## AGREEMENT

THIS AGREEMENT, made and entered into this 17<sup>th</sup> day of July, 2007, by and between the City of Ocoee, Florida, a municipal corporation, hereinafter referred to as "City", and SHELLEY'S SEPTIC TANKS, INC., D/B/A SHELLEY'S ENVIRONMENTAL SYSTEMS, a Florida corporation, hereinafter referred to as "SHELLEY'S".

### WITNESSETH:

WHEREAS, "City" desires to formalize the terms and conditions of an agreement with "SHELLEY'S" to convert Domestic Wastewater Treatment Plant Residuals into "Class B" product as set forth herein,

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, it is agreed as follows:

1. Definitions: The following terms shall have the meaning herein ascribed to them.
  - a. "City's Wastewater Treatment Plant" shall mean the Wastewater Treatment Plant of "City" located at 1800 A.D. Mims Road, Ocoee, Florida.
  - b. "Wastewater Treatment Plant Residuals" ("WWTP Residuals") shall mean the solid or semisolid residue removed during the treatment of municipal wastewater. Not included is the liquid residue or treated effluent or reclaimed water.
  - c. "Wet Ton" shall mean WWTP Residuals having a solids content of no less than twelve percent (12%).
  - d. "SHELLEY'S Residual Facility" shall mean a "Class B" processing center at company owned location in Florida or other facilities as may be designated by "SHELLEY'S".

2. Term: The term of the Agreement shall commence July 17, 2007 and shall continue for a period of five (5) years and terminate on July 16, 2012.

This Agreement may be renewed for an additional one (1) year term upon the mutual agreement of SHELLEY'S and the City. City shall have the right upon request to secure a commitment from SHELLEY'S to renew the Agreement not less than six (6) months prior to expiration of the initial term of this Agreement.

3. Agreement: SHELLEY'S agrees to take and process part of or all of the City's WWTP Residuals that meet DEP criteria for aerobic digestion for Class "C" residuals or better. The purpose of this Agreement is for SHELLEY'S to take WWTP Residuals and process it to a "Class B" stabilized product, and to relieve the City of any and all liability under Chapter 403, F.S., Chapter 62-640, F.A.C., Title 40 C.F.R., Parts 257 and 503 regulations, as they may from time-to-time be amended, and any successor laws, statutes, rules and regulations. By the Agreement SHELLEY'S, however, does not accept liability or responsibility for the City's Wastewater Treatment Plant operations. This Agreement is non-exclusive and the City expressly reserves the right to contract with others to provide similar or identical services to the City. Further, the City has not guaranteed any that any minimum volume of WWTP Residuals will be made available to SHELLEY'S under the terms of this Agreement.

4. Responsibility and Liability: SHELLEY'S further agrees during the entire term of this Agreement to accept all responsibility and liability for the WWTP Residuals from the point in time of pick up from the City Wastewater Treatment Plant and to indemnify and hold the City harmless for any and all violations of Chapter 403, F.S., Chapter 62-640, F.A.C., Title 40 C.F.R. Parts 257 and 503 regulations, as they may from time-to-time be amended, and any successor laws, statutes, rules and regulations, in the treatment, handling, reporting, pick-up, transport, disposal or application of the WWTP residuals for stabilized product. SHELLEY'S further agrees that it is aware of and will comply with requirements for proper disposal and reporting requirements as described in City's Wastewater Treatment Plant permit and as otherwise applicable to the City.

The indemnity set forth herein and the reporting requirements shall survive the termination of this Agreement with respect to any WWTP Residuals collected by SHELLEY'S during the term of this Agreement.

5. Rates: City shall pay SHELLEY'S a price of Thirty-eight Dollars and sixty-five cents (\$38.65) per wet ton for WWTP Residuals. SHELLEY'S shall submit monthly invoices to the City of Ocoee. Each invoice will be accompanied by weight slips to verify tonnage. The City shall make said payment to SHELLEY'S within thirty (30) days of receipt of invoicing. Payment shall be in the form of a check made payable to Shelley's Environmental Systems and mailed to P.O. Box 249, Zellwood, Florida 32798 or such other address designated in writing by SHELLEY'S.

6. Cost of Living: The above rate per ton shall remain firm during the course of this Agreement except for an annual cost of living increase equal to the annual change in the Consumer Price Index as published by the Department of Labor as applicable to the Southeastern United States; provided, however, that the above rate shall not increase more than four percent (4%) per contract year. Said increase or decrease shall be based upon the publication in the quarter preceding the anniversary of this Agreement and shall be equal to the increase or decrease over the average annual rate for the preceding year. If the Department of Labor no longer publishes a Consumer Price Index for the Southeastern United States, then the Consumer Price index shall be based upon such other document or formula as agreed by the parties.

7. Method of Collection: City shall load the WWTP Residuals into trailers owned and operated by SHELLEY'S at the City's Wastewater Treatment Plant. SHELLEY'S will deliver to the City's Wastewater Treatment Plant an empty trailer to receive WWTP Residuals. The City and SHELLEY'S will work out a pick-up schedule for the loads. SHELLEY'S will provide the City with a contact phone number which will enable the City to page a driver or call the office to notify SHELLEY'S of a change in pick-up schedule. The City will provide SHELLEY'S with

seventy-two (72) hours notice of a schedule change, with the exception of a plant breakdown, in which case notice will be provided as soon as reasonably possible.

8. Equipment and Personnel: SHELLEY'S shall provide the necessary equipment, vehicles and personnel for transportation, treatment, and final disposal of WWTP Residuals from the City's Wastewater Treatment Plant to SHELLEY'S facility. SHELLEY'S shall have sole responsibility for the operation and maintenance of SHELLEY'S equipment, vehicles and facility and for the transportation, treatment, and final disposal of WWTP Residuals.

9. Quality Control of Residuals and Compost: City will, at its expense, analyze the WWTP Residuals on a monthly frequency. Metals to be analyzed are those specified in Chapter 62-640.650(1)(b) F.A.C., and include Arsenic, Cadmium, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium and Zinc. Once a year City will provide a hazardous and materials data analysis of the WWTP Residuals as required by the Florida Department of Environmental Protection or the Environmental Protection Agency. City will provide SHELLEY'S with the results of these analyses on as timely a basis as possible.

SHELLEY'S will be responsible, at its expense, for all required analyses on the Class B product including bacteriological and metals testing. Results of such analysis shall be provided to the City on a monthly basis. The analyses shall be conducted by a professional laboratory acceptable to the City.

10. Title: The title to the WWTP Residuals shall pass to SHELLEY'S upon receipt from the City at the City's Wastewater Treatment Plant at A.D. Mims Road.

11. Indemnification: City shall not be liable or in any way responsible for any penalty, fine or loss, injury, death or damage to persons or property which at any time may be suffered or sustained by the City or any person whatsoever arising from the performance by SHELLEY'S and its employees and agents of its obligations under the provisions of this Agreement and SHELLEY'S shall indemnify and hold City harmless therefrom. SHELLEY'S shall additionally indemnify City and hold harmless City against any and all claims, fines, penalties, costs, including

reasonable attorneys fees and costs at the trial and appellate levels, liabilities, loss, injury, death or damage whatsoever on account of, or arising out of, or related to any act or omission of SHELLEY'S in the performance of SHELLEY's services, including but not limited to the marketing, sale and distribution of product and any derivative products or patent and/or trademark claims, or in performance of any of its obligations under this Agreement. SHELLEY'S hereby acknowledges the receipt of Ten Dollars (\$10.00) and other good and valuable consideration from City for this indemnification covenant. The provisions of this paragraph shall survive the termination of this Agreement.

12. Insurance: SHELLEY'S shall maintain in effect throughout the entire term of this Agreement, and any extensions hereof, personal injury liability insurance covering occurrences resulting from performance by SHELLEY'S of SHELLEY's obligations set forth in this Agreement, in the minimum amount as indicated in the bid documents. A Certificate of Insurance shall be furnished by SHELLEY'S to the Utilities Director of the City prior to or upon the effective date of this Agreement, and SHELLEY'S shall maintain a current Certificate of Insurance at all times during the term of this Agreement, and any renewals. Said Certificate of Insurance shall provide that no insurance coverage may be cancelled or reduced by the insurance carrier without the City having been given at least thirty (30) days prior written notice thereof.

13. Compliance with Applicable Law: This Agreement shall be governed by the laws of the State of Florida. SHELLEY'S covenants to promptly comply with all applicable federal, state, county and municipal laws, statutes, ordinances, regulations and rules in the performance of this Agreement and in the subsequent disposition of any WWTP Residuals, Class B product and derivative products. SHELLEY'S shall acquire, at its sole expense, all licenses, registrations and permits necessary to transport, process, market, sell and distribute the Class B product and derivative products.

14. Disclaimer of Joint Venture: SHELLEY'S and City warrant and represent that by the execution of this agreement it is not the intent of the parties that this Agreement be construed or

deemed to represent a joint venture or undertaking between City and SHELLEY'S. SHELLEY'S shall be solely responsible for the conduct of all activities and services provided by SHELLEY'S as part of its business operations. While engaged in carrying out and complying with the terms of this Agreement, SHELLEY'S is an independent contractor and not an agent, officer or employee of City. SHELLEY'S shall not at any time or in any manner represent that it or any of its agents or employees are agents, officers or employees of City.

15. Right of Inspection: City, by and through its authorized agent(s) shall have the right at all reasonable times during the term of this Agreement to inspect or otherwise evaluate the work being performed hereunder by SHELLEY'S and the premises in or on which it is being performed.

16. Termination by Reason of Default: SHELLEY'S acknowledges that the conditions, covenants and requirements on its part to be kept, as set forth herein, are material inducements to City entering into this Agreement. Should SHELLEY'S fail to perform any of the conditions, covenants and requirements on its part to be kept, City shall give written notice thereof to SHELLEY'S specifying those acts or things which require corrections. A reasonable time not to exceed thirty (30) days shall be specified in the notice to cure those faults. Should the default remain upon expiration of the time granted to cure the same, City may terminate the Agreement on forty-eight (48) hours written notice to SHELLEY'S in addition to such other legal or equitable rights it may have, including the right to enforce this Agreement by an action for specific performance. SHELLEY'S will be liable to the City for any damages, penalties, fines, expense, cost or loss incurred by the City as a result of such default by SHELLEY'S, including reasonable attorneys fees and costs at the trial and appellate levels.

17. Impossibility of Performance: In the event that a regulatory change of any applicable federal, state, county or municipal law renders compliance with this Agreement impossible, then either City or SHELLEY'S shall have the right, upon thirty (30) days prior written notice to the other party, to open negotiations for modification to this Agreement to address the regulatory changes. Either party may terminate this Agreement if such negotiations for a modification cannot

be concluded and this Agreement amended within ninety (90) days from the date of the written notice opening negotiations as referenced in this paragraph .

18. Performance and Payment Bond or Irrevocable Letter of Credit: None Required.

19. Remedies - Cumulative: All remedies hereinbefore and hereinafter conferred on City shall be deemed cumulative and no one exclusive of the other or any other remedy conferred by law.

20. Waiver: The failure of City to take any action with respect to any breach of any term, covenant or condition contained herein, or any instance of default hereunder by SHELLEY'S, shall not be deemed to be a waiver by City of any other default or breach.

21. Entire Agreement: This Agreement shall constitute the entire Agreement between the parties. All amendments to this Agreement shall be in writing executed by City and SHELLEY'S.

22. Notices: Notices and other correspondence required by this Agreement shall be sent by certified mail, return receipt requested, to the respective parties at the following addresses:

City of Ocoee  
150 North Lakeshore Drive  
Ocoee, Florida 34761-2258  
Attention: Utilities Director

Shelley's Septic Tanks, Inc.  
D/B/A Shelley's Environmental Systems  
P.O. Box 249  
Zellwood, Florida 32798  
Attention: David Shelley, Jr., President

23. Annual Appropriation of Funds: This Agreement is subject to the annual appropriation of funds by the City for the removal of WWTP Residuals. Should the City fail to appropriate funds for such purpose during any of the City's fiscal years, then the City may terminate this Agreement by thirty (30) days written notice to SHELLEY'S which notice shall cite this Section.

24. Effective Date: The Effective Date of this Agreement shall be July 17, 2007 and such date shall be inserted on the first page of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set there hands and seals as of the day and year set forth below.

**SHELLEY'S SEPTIC TANKS, INC. d/b/a Shelley's Environmental Systems**

By: David Shelley, Jr. Pres.  
David Shelley, Jr. President

Executed on: \_\_\_\_\_, 2007

CITY OF OCOEE, FLORIDA

ATTEST:

S. Scott Vandergrift  
S. Scott Vandergrift, Mayor

Melanie Sibbitt  
~~Beth Eikenberry, City Clerk~~ Acting  
Melanie Sibbitt  
(SEAL)

Executed on: July 17, 2007

FOR USE AND RELIANCE ONLY BY  
THE CITY OF OCOEE, FLORIDA  
APPROVED AS TO FORM AND LEGALITY  
this 19<sup>th</sup> day of June, 2007.

APPROVED BY THE OCOEE CITY  
COMMISSION AT A MEETING HELD  
ON 19<sup>th</sup> of June, 2007  
UNDER AGENDA ITEM NO. E-8.

FOLEY & GARDNER LLP

By: Paul E. Rosenthal  
City Attorney