

# MANATEE COUNTY GOVERNMENT SOURCE SELECTION

<b>SUBJECT</b> Solid Waste Cover Dirt	<b>DATE POSTED</b> January 28, 2011 Date Posted on Mymanatee.org <u>1/28/11</u> By: <u>Sing</u>
<b>PURCHASING REPRESENTATIVE</b> Chris Daley, 749-3048	<b>DATE CONTRACT SHALL BE AWARDED</b> February 4, 2011
<b>DEPARTMENT</b> Utilities, Solid Waste Division- Bryan White	<b>CONSEQUENCES IF DEFERRED</b> EPA Violations <i>RCent</i>
<b>SOURCE RECOMMENDATION</b> IFB #11-0888CD	<b>AUTHORIZED BY DATE</b> Rob Cuthbert January 28, 2011

### ACTION DESIRED

**Authorization to award IFB #11-0888CD, Solid Waste Cover Dirt, on an "as required basis" to the lowest, responsive, responsible bidder meeting specifications, LGA Hauling, Inc. & Florida Dirt Source LLC Joint Venture, Naples, FL for a bid of \$4.35 per cubic yard for an estimated total amount of \$804,750.00.**

### ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy.)

Manatee County Purchasing Ordinance Chapter 2-26; Article IV, Source Selection; Section 2-26-40, Policies

### BACKGROUND/DISCUSSION

- The Solid Waste Division of the Utilities Department has a requirement for an estimated amount of 185,000 cubic yards of solid waste cover dirt at the Lena Road Landfill.
- 12/27/2010 to 1/21/2011, appropriate bid procedures were followed. Notice of the Bid's availability was posted on the Manatee County website as well broadcasted to 111 suppliers through DemandStar bid service. Four (4) bids were received.
- The Solid Waste Division of the Utilities Department reviewed the bids submitted, tested the dirt samples provided, and on 1/24/2011 their recommendation was received to award to Lag Hauling, Inc. & Florida Dirt Source, LLC-Joint Venture.
- LAG Hauling, Inc. & Florida Dirt Source, LLC-Joint Venture's stated source selection of material, as required in the bid documents, is Lake St. Claire in Myakka City, FL.
- The procurement of the solid waste cover dirt is funded from the landfill operating supplies budget 4800010900-552000.


### SUMMARY

**Recommend award of IFB #11-0888CD, Solid Waste Cover Dirt to LAG Hauling, Inc. & Florida Dirt Source, LLC- Joint Venture, Naples FL for an estimated total amount of \$804,750.00.**

<b>ATTACHMENTS: (List in order as attached)</b> Department Recommendation Bid Tabulation	<b>INSTRUCTIONS TO BOARD RECORDS:</b>  N/A
<b>COST</b> \$804,750.00 (estimated)	<b>SOURCE (ACCT# &amp; NAME)</b> Landfill Operating Supplies- 4800010900-55200
<b>COMMENTS</b>	<b>AMT./FREQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT)</b> N/A

11-0888CD  
SOLID WASTE COVER DIRT  
BID TABULATION

VENDOR	PRICE PER CY	EST. CY	TOTAL
LAG Hauling & Florida Dirt Source, LLC- Joint Venture	\$4.350	185,000	\$804,750.00
SMR Aggregates	\$4.690	185,000	\$867,650.00
Heatherwood Properties	\$4.950	185,000	\$915,750.00
Johnson's Excavation	\$6.410	185,000	\$1,185,850.00

Keyed & Verified By:   
Chris Daley, CPPB

Date: January 24, 2011



**Re: Departmental Recommendation of Award for- IFB #11-0888CD- Solid Waste Cover Dirt**

**Bryan White** to: Chris Daley

01/24/2011 01:20 PM

Cc: Dan Gray, Gus DiFonzo, Mike Gore, Jeanne Detweiler, Jim Bokish

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Good afternoon Chris,

We completed a test on the dirt and it passed. I read the Bid Tabulation and recommend the LAG hauling & Florida Dirt Source, LLC - Joint Venture for \$4.350 CY. The Funding Source will be the Landfill Operations budget and the cost # is 4800010900

Bryan White  
Landfill Superintendent  
Utilities Department/Landfill  
941-792-8811 X 8008  
bryan.white@mymanatee.org

Chris Daley

The Purchasing Division received four (4) bid su...

01/24/2011 11:07:22 AM

From: Chris Daley/MCG  
To: Dan Gray/MCG@MCG  
Cc: Gus DiFonzo/MCG@MCG, Mike Gore/MCG@MCG, Bryan White/MCG@MCG  
Date: 01/24/2011 11:07 AM  
Subject: Departmental Recommendation of Award for- IFB #11-0888CD- Solid Waste Cover Dirt

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The Purchasing Division received four (4) bid submittals for the subject bid, that were opened on January 21, 2011 at 3:00 PM.

The copies of the bid submittals are attached for your and your staff's review, along with the tabulation of the subject bid.

Please forward your recommendation for award to the Purchasing Division so that a Source Selection can be prepared and posted in accordance with the Manatee County Purchasing Code 2-26.

In your recommendation for award, please include the Funding Source.

Thank you and Kind regards,

Chris Daley, CPPB  
Senior Buyer  
Manatee County Purchasing  
941-749-3048 (ph)  
941-749-3034 (fax)



11-0888CD - Tabulation.pdf



LAG Bid Submittal.pdf



SMR Bid Submittal.pdf



Heatherwood Bid Submittal.pdf



Johnsons Bid Submittal.pdf



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
01/27/11

**PRODUCER** Markana Insurance Agency  
1716 53rd Ave East  
Bradenton, FL 34203  
Phone (941)755-0293 Fax (866)332-3894

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED** LAG HAULING, INC  
PO Box 21246  
Bradenton, FL 34204-  
(941) 238-7786

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: ASCENDANT INSURANCE COMPANY	
INSURER B: PROGRESSIVE INSURANCE	
INSURER C:	
INSURER D:	
INSURER E:	

### COVERAGES

THE POLICIES OF INSURANCE LISTED HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
C	<input checked="" type="checkbox"/>	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC		01/28/2011	07/28/2012	EACH OCCURRENCE	1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	100,000
						MED EXP (Any one person)	5,000
						PERSONAL & ADV INJURY	1,000,000
						GENERAL AGGREGATE	2,000,000
						PRODUCTS - COMP/OP AGG	1,000,000
B	<input checked="" type="checkbox"/>	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON OWNED AUTOS <input type="checkbox"/> <input checked="" type="checkbox"/> PIP BASIC	04384744-1	10/05/2010	10/05/2011	COMBINED SINGLE LIMIT (Ea accident)	1,000,000
						BODILY INJURY (Per person)	
						BODILY INJURY (Per accident)	
						PROPERTY DAMAGE (Per accident)	
	<input type="checkbox"/>	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/>				AUTO ONLY - EA ACCIDENT	
						OTHER THAN EA ACC AUTO ONLY: AGG	
	<input type="checkbox"/>	<b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	
						AGGREGATE	
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below OTHER	WC621920	06/21/2010	06/21/2011	<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER	1,000,000
						E.L. EACH ACCIDENT	1,000,000
						E.L. DISEASE - EA EMPLOYEE	1,000,000
						E.L. DISEASE - POLICY LIMIT	

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 Manatee County is listed as additional insured when required by contract. Should any of the above described policies be cancelled or changed by restricted amendment before the expiration date thereof, the issuing Company will give 30 days written notice to the certificate holder, County of Manatee, Florida.

**CERTIFICATE HOLDER**  
  
 Manatee County  
 P.O. Box 1000  
 Bradenton, FL 34206

**CANCELLATION**  
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  
 AUTHORIZED REPRESENTATIVE  
 ANA PETERSON P108399



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/25/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Smith Insurance & Bonds 10501 Six Mile Cypress Pkwy Suite 110 Fort Myers, FL 33966	239.243.9729 239.791.1074	CONTACT NAME: Smith Insurance & Bonds PHONE (A/C, No, Ext): 239.243.9729 E-MAIL ADDRESS: msmith@flsuretybonds.com PRODUCER CUSTOMER ID #:	FAX (A/C, No): 239.791.1074
INSURED Florida Dirt Source, LLC 5475 Golden Gate Pkwy Suite #5 Naples, FL 34116	239.649.0600	INSURER(S) AFFORDING COVERAGE	
		INSURER A : Landmark American Insurance Company	NAIC # 33138
		INSURER B : GMAC	11044
		INSURER C : Guarantee Insurance Company	11398
		INSURER D :	
		INSURER E :	
		INSURER F :	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	<input checked="" type="checkbox"/>		LBA076665-0	05/01/2010	05/01/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			FLC 9142423	02/01/2010	02/01/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	GWIC301003723-110	06/15/2010	06/15/2011	WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Manatee County is listed as additional insured when required by contract. Should any of the above described policies be cancelled or changed by restricted amendment before the expiration date thereof, the issuing Company will give 30 days' written notice to the certificate holder, County of Manatee, Florida."

**CERTIFICATE HOLDER****CANCELLATION**

Manatee County P. O. Box 1000 Bradenton, FL 34206-1000	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE Matthew T. Smith
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5475 GOLDEN GATE PARKWAY UNIT 5  
NAPLES, FLORIDA 34116  
239-649-0600 PHONE  
239-649-5700 FAX  
[WWW.FLDIRT.COM](http://WWW.FLDIRT.COM)

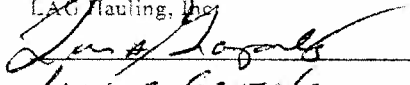
THIS Joint Venture Agreement (the "Agreement") is made and entered into as the 19<sup>th</sup> day of January, 2011, and would Expire on 1<sup>st</sup> day of March, 2012. The parties to this Agreement are LAG Hauling, Inc. having its office at 6330 28th Avenue East Bradenton, FL 34208 and FLORIDA AGGREGATE SOURCE, LLC, having its offices at 5475 Golden Gate Parkway, #5, Naples, Florida.

### Joint Venture Agreement

1. A detailed breakdown of exactly what duties each company will perform and what costs each company will be responsible for is as follows:
  - a. Florida Dirt Source (FDS) will manage the dispatching of trucks, invoicing the owner and payment to sub-contract haulers at an expense of 2% of revenue
  - b. LAG will provide their own trucks at the same cost as the brokered trucks which FDS is able to procure
2. After all truckers have been paid (including the LAG trucks) and the Manatee County Landfill (owner) has paid the LAG/FDS joint venture for services under the contract, the balance of the proceeds will be split 50% to LAG and 50% FDS
3. The joint venture partnership will be for the length of the contract or February 1, 2012, which ever comes sooner.
4. Cost to be split between LAG and FDS


IN WITNESS WHEREOF, the duly authorized parties have executed and delivered this Agreement as of the date first written above.

LAG Hauling, Inc.

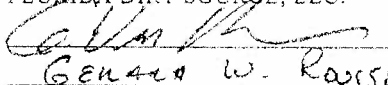
  
\_\_\_\_\_  
Luis R. Gonzalez  
Printed Name

Title: President

Date: January 19, 2011

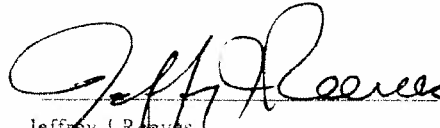
  
\_\_\_\_\_  
Jeffrey J. Reeves  
Printed Name of Witness

FLORIDA DIRT SOURCE, LLC:

  
\_\_\_\_\_  
Geneva W. Rousseau  
Printed Name

Title: Manager

Date: January 19, 2011

  
\_\_\_\_\_  
Jeffrey J. Reeves  
Printed Name of Witness

## PARTNERSHIP AGREEMENT

AGREEMENT made this 27<sup>th</sup> day of January, 2011, between L.A.G HAULING, INC , a Florida corporation (hereinafter "LAG"), and FLORIDA DIRT SOURCE, LLC, a Florida limited liability company (hereinafter "FDS")

### WITNESSETH:

WHEREAS, concurrently with the execution of this Agreement, the Partnership created by this Agreement is entering into a contract with the Manatee County Government for Solid Waste Cover Dirt and known as Bid (IFB) #11-0888 CD (said contract, as the same may hereafter be amended, called the "Contract");

NOW, THEREFORE, LAG and FDS hereby agree as follows.

#### 1. **Formation and Business of the Partnership.**

- 1.1 LAG and FDS hereby establish a general partnership (the "Partnership") under and pursuant to the laws of the State of Florida. The name of the Partnership will be Manatee County Solid Waste Cover Dirt Partnership and the Partnership will have its principal office at the principal office of LAG. The initial capital of the Partnership shall be U.S. \$1,000 00. Concurrently with the execution of this Agreement, LAG and FDS are each contributing 50% of this amount.
- 1.2 The business of the Partnership will be the performance of the Contract on the terms hereinafter set forth.

#### 2. **Operation.**

- 2.1 FDS will be responsible for management and execution of the Contract, which shall include but not be limited to the dispatching of trucks required under the Contract, sending invoices to the proper parties, and providing payment to subcontractor haulers at an expense of two percent (2%) of the revenue provided under the Contract. LAG will provide trucks for hauling at the same pricing as the other subcontractor haulers FDS is able to procure.
- 2.2 LAG will provide trucks for hauling at the same pricing as the other subcontractor haulers FDS is able to procure.
- 2.3 If LAG or FDS, for any reason, fails to perform any of the functions under Section 2.1 or 2.2, the other party will, subject to the provisions thereof, perform those functions.
- 2.4 Once all payments contemplated in Sections 2.1 and 2.2 have been paid, and all other expenses incurred under the Contract have been paid, any remaining cash shall be distributed as set forth in Section 5.

3. **Limitations on Activities.** Except as provided in Section 2, the Partnership shall not, and neither LAG nor FDS on behalf of the Partnership shall, without the prior written approval of LAG and FDS, (a) mortgage the assets of the Partnership, (b) grant a security interest in any contracts, or in any other assets of the Partnership, (c) sell or transfer its assets, (d) borrow money, issue a guarantee or incur any other obligation, (e) make a loan, (f) enter into any other agreement, (g) enter into any amendment to the Contract or to any other agreement to



which the Partnership is a party, (h) engage in any business other than that set forth in Section 1.2, (i) compromise, waive or release any right or claim of the Partnership, or (j) make any assignment for the benefit of creditors or file a petition or otherwise seek protection for the Partnership under any bankruptcy, insolvency or similar law

4. **Profits and Losses; Assets and Liabilities.** LAG and FDS will share equally in the profits and will be liable equally for the losses of the Partnership LAG and FDS will share equally in the assets of the Partnership and will be liable equally for the obligations of the Partnership

5. **Distribution of Excess Cash and Funding of Cash Requirements.**

5.1 At the termination of the Partnership, the Partnership will distribute equally to LAG and FDS its "Excess Cash" (as hereinafter defined).

5.2 The term "Excess Cash" means cash in excess of an amount which LAG and FDS estimate is necessary to meet the obligations of the Partnership in connection with performance under the Contract, including reasonable cash reserves, and to provide for the payment of current liabilities of or with respect to the Contract, plus such other amounts as may be required to be paid or set aside under the terms of the Contract.

5.3 If at any time LAG or FDS determines that the Partnership's funds will be insufficient to meet the Partnership's cash requirements, LAG or FDS will advise the other party of the additional amount required to pay the same; and LAG and FDS each will promptly pay to the Partnership 50% of such additional amount

6. **Accounts; Books and Records.**

6.1 The fiscal year of the Partnership will end on December 31 LAG or FDS will, at the Partnership's expense, prepare or cause to be prepared semi-annual and annual balance sheets, profit and loss statements and statements showing changes in its cash position. LAG or FDS will also prepare or cause to be prepared, at the expense of the Partnership, such other financial data at such other times as LAG or FDS may reasonably request. The annual financial statements of the Partnership will be audited by certified public accountants acceptable to LAG and FDS.

6.2 LAG and FDS will also maintain proper and accurate books and records of all Partnership transactions, and LAG and FDS may inspect and copy these at any reasonable time.

7. **Termination of Partnership.** The Partnership will dissolve and wind up its affairs upon complete performance or termination of the Contract, or February 1, 2012, whichever occurs first. Thereafter the Partnership will engage in no business other than that necessary to wind up its affairs, pay its debts, and distribute its remaining assets to LAG and FDS equally.

8. **Notice.** All notices under or with respect to this Agreement must be in writing and shall be sent to the parties at their respective addresses appearing below, or in the event of a change in any address, then to such other address as to which notice of the change is given:

LAG: Attention: Luis A Gonzalez

6330 28th Avenue East  
Brandenton, Florida 34208

FDS: Attention: Michelle Rousseau  
5475 Golden Gate Parkway  
Naples, Florida 34116

Notice shall be deemed given on receipt

9. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the law of the State of Florida. The parties agree that in the event of a dispute, venue for dispute resolution shall be in Charlotte County, Florida.
10. **Miscellaneous.**
  - 10.1 This Agreement may be amended only by a written instrument signed by the parties hereto
  - 10.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that, without restricting either party's right to assign to another only its share in the profits of the Partnership, neither party may transfer, assign or encumber any of its rights or obligations under this Agreement without the written consent of the other
  - 10.3 The Partnership and LAG and FDS will execute and file any documents required by applicable law in connection with the Partnership and the conduct of its business.
  - 10.4 Section headings are for purposes of convenient reference only and shall not affect the meaning or interpretation of any provision of this Agreement.
11. **Default.** If either party to this Agreement fails to perform any obligation stated herein, then the non-defaulting party shall first give written notice to the defaulting party of the nature and extent of the default. The non-defaulting party shall have a period of five (5) days from the receipt of such notice to cure any monetary payment default and thirty (30) days from the date of receipt of such notice to cure any non-monetary default. In the event the default is not cured, then in addition to all other remedies available at law and equity, the non-defaulting party may terminate this Agreement.
12. **Time of Essence.** Time is of the essence in this Agreement.
13. **Attorneys Fees.** If any litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and costs, whether accrued prior to trial, during trial, on appeal, or in bankruptcy.
14. **Captions.** The captions and titles of the various paragraphs in this Agreement are for convenience and reference only. These captions in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.
15. **Non-Waiver.** The failure of either party to insist upon the other party's compliance with its obligations under this Agreement in any one or more instances shall not operate to release such other party from its duties to comply with such obligations in all other instances.
16. **Saving.** The invalidity or enforceability of any provision of this Agreement shall not affect or impair the validity of any other provision or term.
17. **Severability.** If any provision of this Agreement is held to be illegal or invalid the other provisions shall remain in full force and effect.

- 18 **Entire Agreement.** This Agreement constitutes the full and complete understanding between the parties and all Agreements and/or representations either oral or written, are hereby superseded upon the execution of this Agreement.
- 19 **Successors.** The obligations and covenants of this Agreement shall bind and benefit the successors, personal representatives, heirs and assigns of the parties hereto.
- 20 **Counterparts and Facsimile.** This document may be executed in several counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument. A facsimile copy of this Agreement and any signatures thereon shall be considered for all purposes as originals.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

L A G HAULING, INC., a Florida corporation,

By: 

Name: LUIS A GONZALEZ

Title: PRESIDENT

FLORIDA DIRT SOURCE, I.L.C., a Florida limited liability company,

By: 

Name: MICHELLE ROUSSEAU

Title: MANAGING MEMBER