



City of Pembroke Pines

**AGREEMENT BETWEEN
THE CITY OF PEMBROKE PINES AND
BRENNTAG MID-SOUTH, INC.**

THIS AGREEMENT ("Agreement"), dated March 18, 2024, is entered into by and between the **City of Pembroke Pines**, a Florida municipal corporation with a business address of 601 City Center Way, Pembroke Pines, Florida 33025 (hereinafter referred to as "CITY"), and **Brenntag Mid-South, Inc.**, a For Profit Corporation, with a business address of **1405 Highway 136 West, Henderson, KY 42420** ("CONTRACTOR"). CITY and CONTRACTOR shall be collectively referred to herein as "Parties" and individually as "Party".

WHEREAS, the CITY is in need of sodium hydroxide (caustic soda); and,

WHEREAS, on **July 18, 2023**, the Pinellas County entered into an agreement with CONTRACTOR, pursuant to Solicitation Invitation to Bid (ITB) # 23-0392-ITB Sodium Hydroxide, for the provision of sodium hydroxide commencing on July 18, 2023, for a two (2) year term, and which allows for two (2) additional term of two (2) years should the parties desire to renew the terms of the agreement; and,

WHEREAS, pursuant to CITY Code of Ordinances §35.18(C)(5), entitled "Utilization of Other Governmental Agencies' Contracts", CITY has evaluated the ITB # 23-0392-ITB Sodium Hydroxide, for the provision of sodium hydroxide and the related agreement with CONTRACTOR and determined such terms and pricing may be utilized by CITY to obtain sodium hydroxide; and,

WHEREAS, pursuant to CITY Code of Ordinances §35.18(C)(5), the CITY desires to engage CONTRACTOR utilizing the terms and pricing offered in ITB # 23-0392-ITB Sodium Hydroxide and the related agreement with CONTRACTOR; and,

WHEREAS, CONTRACTOR agrees to extend the same terms and pricing as set forth in the ITB # 23-0392-ITB Sodium Hydroxide and the related agreement with CONTRACTOR to CITY pursuant to the terms set forth herein; and,

WHEREAS, the Parties wish to incorporate and supplement the terms and conditions set forth in ITB # 23-0392-ITB Sodium Hydroxide and the related agreement with CONTRACTOR, attached hereto and made a specific part hereof as **Exhibit "A"**, with the terms and requirements set forth herein; and,

WHEREAS, at its meeting of March 6, 2024, the CITY Commission approved this Agreement and authorized the proper CITY officials to execute this Agreement.



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NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein as if set forth in full.
2. **Scope of Services.** CITY agrees to purchase, and CONTRACTOR agrees to provide sodium hydroxide (caustic soda), in accordance with the terms and price units more particularly described in the ITB # 23-0392-ITB Sodium Hydroxide and the related agreement with CONTRACTOR, attached hereto as **Exhibit "A"** and by this reference made a part hereof.
 - 2.1 The Parties acknowledge that this Agreement is a term contract, and that CITY shall purchase and CONTRACTOR shall provide the Commodities on an as-needed basis upon the written request of the CITY. Nothing contained herein nor in any exhibit or amendment hereto, shall require the CITY to purchase any set quantity of Commodities or services.
 - 2.2 As needed, the CITY shall submit a purchase order to the CONTRACTOR for a specified amount of Commodities. CONTRACTOR shall then provide the specified amount of Commodities in accordance with the purchase order and submit an invoice to CITY for such Commodities.
 - 2.3 CONTRACTOR acknowledges that it has the capacity, ability and/or inventory to provide the Commodities herein required to the CITY on an as-needed basis and in accordance with the terms set forth herein and in **Exhibit "A"** attached hereto.
3. **Compensation and Method of Payment.** CONTRACTOR shall be entitled to invoice CITY based on CITY's purchase order(s) and in accordance with the unit pricing listed in the attached **Exhibit "A"**. All invoices shall include information such as but not be limited to, date of delivery, quantity, price, and any other information reasonably required by CITY. The annual amount of compensation paid to CONTRACTOR pursuant to this Agreement for the Commodities herein required shall not exceed **SIXTY-ONE THOUSAND, SEVEN HUNDRED TWENTY DOLLARS AND 00/100 CENTS (\$61,720.00)**.
4. **Changes to Scope.** CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the scope of services to be provided pursuant to this Agreement and in accordance with **Exhibit "A"**. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of CITY's Code of Ordinances and must be contained in a written amendment, executed by the Parties hereto prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work. In no event will the CONTRACTOR be compensated for any work which has not been described either herein, in a purchase order, or in a separate written agreement executed by the Parties hereto.
5. **Term and Termination.**



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- 5.1 **Term.** CONTRACTOR shall provide the Commodities required herein and in accordance with **Exhibit "A"**, attached hereto and by this reference made a part hereof, on an as-needed basis, for a period commencing on the effective date of Agreement and terminating on **July 17, 2025**. Should Pinellas County authorize any of its renewal terms, the CITY and CONTRACTOR may renew the terms of this Agreement pursuant to a written amendment hereto.
- 5.2 **Termination for Convenience.** This Agreement may be terminated by CITY for convenience, upon providing thirty (30) days written notice of such termination to CONTRACTOR, in which event CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination.
- 5.3 **Termination for Cause; Default.** In addition to all other remedies available to CITY, this Agreement shall be subject to termination by CITY for cause, should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) calendar days after receipt by CONTRACTOR of written notice of such neglect or failure. In the event that CONTRACTOR abandons this Agreement, CONTRACTOR shall indemnify CITY against loss pertaining to such abandonment. CITY reserves the right to recover any ascertainable actual damages incurred as a result of the failure of CONTRACTOR to perform in accordance with the requirements of this Agreement.
- 5.3.1 **Default Events.** The occurrence of any one or more of the following events shall constitute a default and breach of this agreement by CONTRACTOR:
- 5.3.1.1 Unnecessary delay, refusal of, or failure to correct deficiencies for a period of thirty days after receipt by CONTRACTOR of written notice of such neglect or failure.
 - 5.3.1.2 Assignment and/or transfer of this Agreement which is not expressly permitted here under or in writing by CITY.
 - 5.3.1.3 The filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudicated bankrupt (unless, the same is dismissed within sixty (60) calendar days of such filing).
- 5.3.2 **Remedies in Default.** In the event of default, all payments remaining due to CONTRACTOR at the time of default, less all sums incurred by CITY for reasonable, direct, out-of-pocket costs incurred by CITY by reason of default, shall be due and payable to CONTRACTOR. In the event CITY completes the Agreement at a lesser cost than would have been payable to CONTRACTOR under this Agreement, if the same had been fulfilled by CONTRACTOR, CITY shall

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retain such differences. Should such cost to CITY be greater, CONTRACTOR shall pay the amount of such excess to the CITY.

6. Insurance.

6.1 CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants, assigns, employees, consultants, separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against claims, demands, or causes of action whatsoever, and the resulting losses, damages, costs and expenses, including but not limited to attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY arising out of or resulting from the failure of the CONTRACTOR to take out and maintain insurance as required under this Agreement.

6.2 CONTRACTOR AND ALL SUBCONTRACTORS, SHALL NOT BE ALLOWED TO commence work under this AGREEMENT until the CONTRACTOR has obtained all insurance required by this Insurance Section, including the purchase of a Policy of Insurance naming the City of Pembroke Pines as an Additional Named Insured, which Insurance Policy and its terms must be agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines, nor shall any SUBCONTRACTOR be allowed to commence work under this AGREEMENT until the SUBCONTRACTOR complies with the Insurance requirements required by this Insurance Section, including the duty to purchase a Policy of Insurance which names the City of Pembroke Pines as an Additional Named Insured, which Insurance Policy and its terms are agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines.

6.3 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

6.4 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

6.5 Certificates of Insurance shall provide for thirty (30) calendar days' prior written notice to the CITY in case of cancellation in the policy limits or coverage states. If the carrier cannot provide thirty (30) calendar days' notice of cancellation, either the CONTRACTOR or their insurance broker must agree to provide notice.



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6.6 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least thirty (30) calendar days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

6.7 **Required Insurance.** CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

✓ ☐ 6.7.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Designated Construction Project(s) General Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of ten (10) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

✓ ☐ 6.7.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee



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If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

Yes No

- ✓ ☐ 6.7.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

Yes No

- ✓ ☐ 6.7.4 Environmental/Pollution Liability insurance shall be required with a limit of no less than \$1,000,000 per wrongful act. Coverage shall include: CONTRACTOR's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first calendar day of service to the CITY. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

6.8 REQUIRED ENDORSEMENTS.

- 6.8.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 6.8.2 Waiver of all Rights of Subrogation against the CITY.
- 6.8.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 6.8.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
- 6.8.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.

- 6.9 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The



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CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

6.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in Section 7, herein.

7. **Indemnification.** The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature to the extent caused in whole or in part by the negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR or its employees, agents, partners, principals or subcontractors. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon.

7.1 Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

7.2 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

8. **Agreement Subject to Funding.** This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

9. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

10. **Sovereign Immunity.** Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

11. **Independent Contractor.** This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal



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Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, or Federal policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

12. **Non-Discrimination & Equal Opportunity Employment.** During the performance of the Agreement, neither CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that CONTRACTOR will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

13. **Uncontrollable Forces.** Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, acts of God, war, riot, civil disturbance, sabotage, and governmental actions. Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the



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circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

14. **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
15. **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the Parties hereto.
16. **Public Records.** The City of Pembroke Pines is a public agency subject to Chapter 119, Florida Statutes. CONTRACTOR shall comply with Florida's Public Records Law. Specifically, CONTRACTOR shall:
 - 16.1 Keep and maintain public records required by the CITY to perform the service;
 - 16.2 Upon request from the CITY's custodian of public records, 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 in Chapter 119, Florida Statutes, or as otherwise provided by law;
 - 16.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after CONTRACTOR transfers the records in its possession to the CITY; and
 - 16.4 Upon completion of the Agreement, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by CONTRACTOR 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.
 - 16.5 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a default and breach of this Agreement, for which, the CITY may terminate the Agreement in accordance with the terms herein.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY



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**TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT,
CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
mgraham@ppines.com**

17. **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CITY designates the following as the respective places for giving of notice:

CITY: Charles F. Dodge, City Manager
City of Pembroke Pines
601 City Center Way, 4th Floor
Pembroke Pines, Florida 33025
Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
Facsimile No. (954) 771-4923

CONTRACTOR: Ray Sibbitt
Brenntag Mid-South, Inc.
1405 Highway 136 West
Henderson, KY 42420
Telephone No. (270) 860-3145
Email: ray.sibbitt@brenntag.com

18. **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.
19. **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the



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Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

20. **Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, or are engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

20.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

20.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

20.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Terrorism Sectors List, created pursuant to Section 215.473, Florida Statutes; or

20.2.2 Is engaged in business operations in Syria.

21. **Employment Eligibility.** CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

21.1 **Definitions for this Section.**

21.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

21.1.2 "Subcontractor" includes, but is not limited to, a vendor or consultant.

21.1.3 "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

21.1.4 "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.



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- 21.2 **Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:
- 21.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
 - 21.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and
 - 21.2.3 The Contractor shall comply with the provisions of Section 448.095, Florida Statutes., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Agreement under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.
22. **Records and Audit.** CITY may, upon prior written notice and at a mutually agreed upon date for a period of up to five (5) years following the date of final performance of services by CONTRACTOR under this Agreement, review those books and records of CONTRACTOR which are related to CONTRACTOR's performance under this Agreement. CONTRACTOR agrees to maintain all such books and records at its relevant branch location for a period of five (5) years after final payment is made under this Agreement, or as otherwise required by applicable law.
23. **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it



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shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

24. **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.
25. **Compliance with Laws.** It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, City, state, and federal agencies as applicable.
26. **Entire Agreement.** These terms, together with Exhibit "A", incorporated herein by reference, set forth the entire understanding of the parties and supersedes all prior agreements, whether written or oral, with request to such subject matter. All references to "Punta Gorda" or "City" in Exhibit "A" shall be construed as a reference to CITY, and all terms and conditions shall be deemed as having been available for use by the City of Pembroke Pines.
27. **Conflict of Terms.** In the event of any conflict or ambiguity by and between the terms set forth in Exhibit "A" with the terms set forth herein, the terms of this Agreement shall prevail.

SIGNATURE PAGE FOLLOWS



City of Pembroke Pines

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

CITY:

CITY OF PEMBROKE PINES, FLORIDA

APPROVED AS TO FORM:

DocuSigned by:

Jacob Horowitz

A563A1DDEFD5417...

Print Name: Jacob Horowitz

OFFICE OF THE CITY ATTORNEY

ATTEST:

DocuSigned by:

Marlene D. Graham

E858EEE04EEF4F3...

March 18, 2024

MARLENE D. GRAHAM, CITY CLERK

BY: [Signature]

MAYOR FRANK C. ORTIS

DocuSigned by:

BY: Charles F. Dodge

47B966ECFDAD4AC...

March 18, 2024

CHARLES F. DODGE, CITY MANAGER

DS



CONTRACTOR:

BRENNTAG MID-SOUTH, INC.

Signed By: Ray Sibbitt

Printed Name: Ray Sibbitt

Title: Director of Mini Bulk and Municipal Growth

AGREEMENT

GOODS AND SERVICES AGREEMENT

THIS GOODS AND SERVICES AGREEMENT is made as of the 18th day of July 2023 (effective date), by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Brenntag Mid-South, Inc., located in KY ("Contractor"), (individually, "Party," collectively, "Parties").

W I T N E S S E T H:

WHEREAS, the County requested proposals pursuant to 23-0392 ("ITB") for Sodium Hydroxide; and

WHEREAS, based upon the County's assessment of Contractor's proposal, the County selected the Contractor to provide the Services as defined herein; and

WHEREAS, Contractor represents that it has the experience and expertise to provide Goods and perform the Services as set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants, agreements, terms and conditions herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. Definitions

- A. **"Agreement"** means this Agreement, including all Exhibits, which are expressly incorporated herein by reference, and any amendments thereto.
- B. **"County Confidential Information"** means any County information deemed confidential and/or exempt from Section 119.07, Florida Statutes, and Section 24(a), Article 1 of the Florida Constitution, or other applicable law, including, but not limited to data or information referenced in this Good and Services Agreement, and any other information designated in writing by the County as County Confidential Information.
- C. **"Contractor Confidential Information"** means any Contractor information that is designated as confidential and/or exempt by Florida's public records law, including information that constitutes a trade secret pursuant to Chapter 688, Florida Statutes, and is designated in this Agreement or in writing as a trade secret by Contractor (unless otherwise determined to be a public record by applicable Florida law). Notwithstanding the foregoing, Contractor Confidential Information does not include information that: (i) becomes public other than as a result of a disclosure by the County in breach of the Agreement; (ii) becomes available to the County on a non-confidential basis from a source other than Contractor, which is not prohibited from disclosing such information by obligation to Contractor; (iii) is known by the County prior to its receipt from Contractor without any obligation or confidentiality with respect thereto; or (iv) is developed by the County independently of any disclosures made by Contractor.
- D. **"Contractor Personnel"** means all employees of Contractor, and all employees of subcontractors of Contractor, including, but not limited to temporary and/or leased employees, who are providing the Services at any time during the project term.
- E. **"Services"** means the work, duties and obligations to be carried out and performed safely by Contractor under this Agreement, as described throughout this Agreement and as specifically described in the Statement of Work Exhibit attached hereto and incorporated herein by reference. As used in this Agreement, Services shall include any component task, subtask, service, or function inherent, necessary, or a customary part of the Services, but not specifically described in this Agreement, and shall include the provision of all standard day-to-day administrative, overhead, and internal expenses, including costs of bonds and insurance as required herein, labor, materials, equipment, safety equipment, products, office supplies, consumables, tools, postage, computer hardware/software, telephone charges, copier usage, fax charges, travel, lodging, and per diem and all other costs required to perform Services except as otherwise specifically provided in this Agreement.

2. Execution of Agreement

The execution of this Agreement is expressly limited by the Terms and Conditions hereon. County and the Contractor are not bound by additional provisions or provisions at variance herewith that may appear in the Contractor's quotation, estimate, scope of work, or any other such related documents, acknowledgement in force, or any other communication from Contractor to or from County unless such provision is expressly set forth herein.

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3. Conditions Precedent

This Agreement, and the Parties' rights and obligations herein, are contingent upon and subject to the Contractor securing and/or providing the performance security, if required, and the insurance coverage(s) required, within 10 days of the Effective Date. No Services shall be performed by the Contractor and the County shall not incur any obligations of any type until Contractor satisfies these conditions. Unless waived in writing by the County, in the event the Contractor fails to satisfy the conditions precedent within the time required herein, the Agreement shall be deemed not to have been entered into and shall be null and void.

4. Services

- A. **Services** - The County retains Contractor, and Contractor agrees to provide the Services. All Services shall be performed to the satisfaction of the County and shall be subject to the provisions and terms contained herein and the Exhibits attached hereto.
- B. **Services Requiring Prior Approval** - Contractor shall not commence work on any Services requiring prior written authorization in the Statement of Work without approval from the Pinellas County Utilities Wastewater Treatment Manager.
- C. **Additional Services** - From the Effective Date and for the duration of the project, the County may elect to have Contractor perform Services that are not specifically described in the Statement of Work attached hereto but are related to the Services ("Additional Services"), in which event Contractor shall perform such Additional Services for the compensation specified in the Statement of Work attached hereto. Contractor shall commence performing the applicable Additional Services promptly upon receipt of written approval as provided herein.
- D. **De-scoping of Services** - The County reserves the right, in its sole discretion, to de-scope Services upon written notification to the Contractor by the County. Upon issuance and receipt of the notification, the Contractor and the County shall enter into a written amendment reducing the appropriate Services Fee for the impacted Services by a sum equal to the amount associated with the de-scoped Services as defined in the payment schedule in this Agreement, if applicable, or as determined by mutual written consent of both Parties based upon the scope of work performed prior to issuance of notification.
- E. **Independent Contractor Status and Compliance with the Immigration Reform and Control Act** - Contractor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et seq, and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach of the Agreement.
- F. **Non-Exclusive Services** - Award of this Agreement imposes no obligation on the County to utilize the Contractor for all goods and/or services of this type, which may develop during the agreement period. This is a non-exclusive Agreement. During the term of this Agreement, and any extensions thereof, the County reserves the right to contract for another provider for similar goods and/or services as it determines necessary in its sole discretion.
- G. **Project Monitoring** - During the term of the Agreement, Contractor shall cooperate with the County, either directly or through its representatives, in monitoring Contractor's progress and performance of this Agreement.

5. Term of Agreement

- A. **Initial Term** - The term of this Agreement shall commence on:
the Effective Date and shall remain in full force and for twenty-four (24) months, or until termination of the Agreement, whichever occurs first.
- B. **Term Extension**
The Parties may extend the term of this Agreement for two (2) additional twenty-four (24) month period(s) pursuant to the same terms, conditions, and pricing set forth in the Agreement by mutually executing an amendment to this Agreement, as provided herein.

6. Orders

Within the term of this Agreement, County may place one or more orders for goods and/or services at the prices listed on the Price Schedule Exhibit attached hereto, and which is incorporated by reference hereto.

AGREEMENT**7. Delivery / Claims**

Prices on the Schedule of Prices are F.O.B. Destination, FREIGHT INCLUDED and unloaded to location(s) within Pinellas County. Actual delivery address(es) will be identified at time of order. Contractor will be responsible for making any and all claims against carriers for missing or damaged items.

8. Inspection

In County's sole discretion, goods rejected due to inferior quality or workmanship will be returned to Contractor at Contractor's expense and are not to be replaced except upon receipt of written instructions from County.

9. Material Quality

All goods and materials purchased and delivered pursuant to this Agreement will be of first quality and not damaged and/or factory seconds. Any materials damaged or not in first quality condition upon receipt must be exchanged within 24 hours of notice to the Contractor at no charge to County.

10. Material Safety Data

In accordance with OSHA Hazardous Communications Standards, it is the Contractor seller's duty to advise if a product is a toxic substance and to provide a Material Safety Data Sheet at time of delivery.

11. Purchase Order Number

Each order will contain the Purchase Order Number applicable to this Agreement, and such Purchase Order Number must appear on all packing slips, invoices and all correspondence relating to the Order. County will not be responsible for goods delivered without a Purchase Order Number.

12. Variation in Quantity

County assumes no liability for goods or materials produced, processed or shipped in excess of the amounts ordered pursuant to the terms of this Agreement.

13. Warranty

Seller warrants that the goods are of first quality and as described in Prices Schedule. All manufacturer, producer or seller warranties offered to any other purchaser are expressly available and applicable to County.

14. Compensation and Method of Payment

- A. **Goods and Services Fee** - As total compensation for the Goods and Services, the County shall pay the Contractor the sums as provided in this Section Compensation and Method Payment ("Goods and Services Fee"), pursuant to the terms and conditions as provided in this Agreement. It is acknowledged and agreed by Contractor that this compensation constitutes a limitation upon County's obligation to compensate Contractor for such Goods and Services required by this Agreement but does not constitute a limitation upon Contractor's obligation to provide Goods and perform all of the Services required by this Agreement. In no event will the Goods and Services Fee paid exceed the not-to-exceed sums set out in subsections below, unless the Parties agree to increase this sum by written amendment as authorized in the Amendment Section of this Agreement.
- B. **Spending Cap and Payment Structure** - The County agrees to pay the Contractor the total not-to-exceed sum of \$806,120.00, with an annual not-to-exceed expenditure of \$403,060.00 per year, for Goods and Services completed and accepted herein, payable on a fixed-fee basis for the deliverables as set out in Exhibit C, upon submittal of an invoice as required herein.
- C. **Price Adjustment** - Unit prices adjustable (Decrease/Increase) at twelve (12) months after the date of award and thereafter annually for the life of the contract, in an amount not to exceed the average of the Consumer Price Index (CPI) or 10%, whichever is less, for all Urban Consumers, Series Id: CUUR0000SA0, Not Seasonally Adjusted, Area: U.S. city average, Item: All items, Base Period: 1982-84=100 for the twelve months prior.

It is the Contractor's responsibility to request any pricing adjustment under this provision. For any adjustment to commence annually, the Contractor's request for adjustment shall be submitted between 90-120 days prior to contract anniversary date, utilizing the available index at the time of request. The Contractor adjustment request shall not be in excess of the relevant pricing index change. If no adjustment request is received from the Contractor, the County will assume the Contractor has agreed to continue without a pricing adjustment. Any adjustment request received outside of the 90-120-day period above shall not be considered.

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- D. **Term Extension Price Adjustment** - Term extensions will allow for price adjustments (Decrease/Increase) annually in an amount not to exceed the average of the Consumer Price Index (CPI) or 10%, whichever is less, for all Urban Consumers, Series Id: CUUR0000SA0, Not Seasonally Adjusted, Area: U.S. city average, Item: All items, Base Period: 1982-84=100 for the twelve months prior to extension. The extension shall be exercised only if all terms and conditions remain the same and the County Administrator or Director of Purchasing grants approval.

It is the Contractor's responsibility to request any pricing adjustment under this provision. For any adjustment to commence on the first day of any exercised extension period, the Contractor's request for adjustment should be submitted at time of the extension request from the County, utilizing the available index at the time of request. The Contractor adjustment request should not be in excess of the relevant pricing index change. If no adjustment request is received from the Contractor, the County will assume the Contractor has agreed that the extension term may be exercised without pricing adjustment. Any adjustment request received after the commencement of a new extension period may not be considered.

E. **Travel Expenses**

The Services Fee includes all travel, lodging and per diem expenses incurred by Contractor in performing the Services.

- F. **Taxes** - Contractor acknowledges that the County is not subject to any state or federal sales, use, transportation and certain excise taxes.
- G. **Payments and Invoicing** - Contractor shall submit invoices for payments due as provided herein and authorized reimbursable expenses incurred with such documentation as required by County. Invoices shall be submitted to:
The designated person as set out in the Notices Section herein.

For time and materials Services, all Contractor Personnel shall maintain logs of time worked, and each invoice shall state the date and number of hours worked for Services authorized to be billed on a time and materials basis.

All payments shall be made in accordance with the requirements of Section 218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act." The County may dispute any payments invoiced by Contractor in accordance with the County's Invoice Payments Dispute Resolution Process established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

15. **Acceptance of Services**

For all Services deliverables that require County acceptance as provided in the Statement of Work, the County, through the Pinellas County Utilities Wastewater Treatment Manager or designee, will have 10 calendar days to review the deliverable(s) after receipt or completion of same by Contractor, and either accept or reject the deliverable(s) by written notice to Brenntag Mid-South, Inc. If a deliverable is rejected, the written notice from the County will specify any required changes, deficiencies, and/or additions necessary. Contractor shall then have 7 calendar days to revise the deliverable(s) to resubmit and/or complete the deliverable(s) for review and approval by the County, who will then have 7 calendar days to review and approve, or reject the deliverable(s); provided however, that Contractor shall not be responsible for any delays in the overall project schedule that result from the County's failure to timely approve or reject deliverable(s) as provided herein. Upon final acceptance of the deliverable(s), the County will accept the deliverable(s) in writing.

16. **Discounts**

Delay in receiving an invoice, invoicing for materials shipped ahead of specified schedule, or invoices rendered with errors or omissions will be considered just cause for County to withhold payment without losing discount privileges. Discount privilege will apply from date of scheduled delivery, the date of receipt of goods, or the date of approved invoice, whichever is later.

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17. Subcontracting/Assignment.

A. **Subcontracting** - Contractor is fully responsible for completion of the Services required by this Agreement and for completion of all subcontractor work, if authorized as provided herein. Contractor shall not subcontract any work under this Agreement to any subcontractor other than the subcontractors specified in the proposal and previously approved by the County, without the prior written consent of the County, which shall be determined by the County in its sole discretion.

B. **Assignment**

This Agreement, and all rights or obligations hereunder, shall not be assigned, transferred, or delegated in whole or in part, including by acquisition of assets, merger, consolidation, dissolution, operation of law, change in effective control of the Contractor, or any other assignment, transfer, or delegation of rights or obligations, without the prior written consent of the County. The Contractor shall provide written notice to the County within fifteen (15) calendar days of any action or occurrence assigning the Agreement or any rights or obligations hereunder as described in this section. In the event the County does not consent to the assignment, as determined in its sole discretion, the purported assignment in violation of this section shall be null and void, and the County may elect to terminate this Agreement by providing written notice of its election to terminate pursuant to this provision upon fifteen (15) days' notice to Contractor.

18. Personnel

A. **E-Verify** - The contractor and their subcontractor(s) must register with and use the E-verify system in accordance with Florida Statute 448.095. A contractor and subcontractor may not enter into a contract with the County unless each party registers with and uses the E-verify system.

If a contractor enters a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the Subcontractor does not employ, contract with, or subcontract with unauthorized aliens. The contractor must maintain a copy of the affidavit for the duration of the contract.

If the County, Contractor, or Subcontractor has a good faith belief that a person or entity with which it is contracting has knowingly violated Florida Statute 448.09(1) they shall immediately terminate the contract with the person or entity.

If the County has a good faith belief that a Subcontractor knowingly violated this provision, but the Contractor otherwise complied with this provision, the County will notify the Contractor and order that the Contractor immediately terminate the contract with the Subcontractor.

A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged to Section 448.095(2)(d), Florida Statute. Contractor acknowledges upon termination of this agreement by the County for violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor acknowledges that Contractor is liable for any additional costs incurred by the County as a result of termination of any contract for a violation of this section.

Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in this section, requiring the subcontracts to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any Subcontractor or Lower Tier Subcontractor with the clause set for in this section.

B. **Qualified Personnel** - Contractor agrees that each person performing Services in connection with this Agreement shall have the qualifications and shall fulfill the requirements set forth in this Agreement

C. **Approval and Replacement of Personnel** - The County shall have the right to approve all Contractor Personnel assigned to provide the Services, which approval shall not be unreasonably withheld. Prior to commencing the Services, the Contractor shall provide at least ten (10) days written notice of the names and qualifications of the Contractor Personnel assigned to perform Services pursuant to the Agreement. Thereafter, during the term of this Agreement, the Contractor shall promptly and as required by the County provide written notice of the names and qualifications of any additional Contractor Personnel assigned to perform Services. The County, on a reasonable basis, shall have the right to require the removal and replacement of any of the Contractor Personnel performing Services, at any time during the term of the Agreement.

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The County will notify Contractor in writing in the event the County requires such action. Contractor shall accomplish any such removal within forty-eight (48) hours after receipt of notice from the County and shall promptly replace such person with another person, acceptable to the County, with sufficient knowledge and expertise to perform the Services assigned to such individual in accordance with this Agreement. In situations where individual Contractor Personnel are prohibited by applicable law from providing Services, removal and replacement of such Contractor Personnel shall be immediate and not subject to such forty-eight (48) hour replacement timeframe and the provisions of the Termination Section of this Agreement shall apply if minimum required staffing is not maintained.

19. Name Changes

The Contractor is responsible for immediately notifying the County of any company name change, which would cause invoicing to change from the name used at the time of the original Agreement.

20. Compliance with Laws

Contractor shall comply with all applicable federal, state, county and local laws, ordinances, rules and regulations in the performance of its obligations under this Agreement, including the procurement of permits and certificates where required, and including but not limited to laws related to Workers Compensation, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Minority Business Enterprise (MBE), occupational safety and health and the environment, equal employment opportunity, privacy of medical records and information, as applicable. Failure to comply with any of the above provisions shall be considered a material breach of the Agreement.

21. Applicable Law and Venue

This Agreement and any and all purchases made hereunder shall be governed by and construed in accordance with the laws of the State of Florida (without regard to principles of conflicts of laws). The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a Party elects to file an action in federal court) courts located in or for Pinellas County, Florida. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this section. Each Party waives any right it may have to assert the doctrine of forum non-conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section.

22. Public Entities Crimes

Contractor is directed to the Florida Public Entities Crime Act, Section 287.133, Florida Statutes, as well as Florida Statute 287.135 regarding Scrutinized Companies, and represents to County that Contractor is qualified to transact business with public entities in Florida, and to enter into and fully perform this Agreement subject to the provisions stated therein. Failure to comply with any of the above provisions shall be considered a material breach of the Agreement.

23. Waiver

No waiver by either Party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.

24. Due Authority

Each Party to this Agreement represents and warrants that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement; (ii) each person executing this Agreement on behalf of the Party is authorized to do so; (iii) this Agreement constitutes a valid and legally binding obligation of the Party, enforceable in accordance with its terms.

AGREEMENT**25. Termination****A. Contractor Default Provisions and Remedies of County**

1. **Events of Default** - Any of the following shall constitute a "Contractor Event of Default" hereunder:
 - i. Contractor fails to maintain the staffing necessary to perform the Services as required in the Agreement, fails to perform the Services as specified in the Agreement, or fails to complete the Services within the completion dates as specified in the Agreement;
 - ii. Contractor breaches Confidential Information Section of this Agreement;
 - iii. Contractor fails to gain acceptance of goods and/or services deliverable, for 2 consecutive iterations; or
 - iv. Contractor fails to perform or observe any of the other material provisions of this Agreement.
2. **Cure Provisions** - Upon the occurrence of a Contractor Event of Default as set out above, the County shall provide written notice of such Contractor Event of Default to Contractor ("Notice to Cure"), and Contractor shall have 30 calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the Contractor Event of Default described in the written notice.
3. **Termination for Cause by the County** - In the event that Contractor fails to cure a Contractor Event of Default as authorized herein, or upon the occurrence of a Contractor Event of Default as specified in Termination – Contractor Default Provisions and Remedies of County – Events of Default Section of this Agreement, the County may terminate this Agreement in whole or in part, effective upon receipt by Contractor of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the County.

B. County Default Provisions and Remedies of Contractor

1. **Events of Default** - Any of the following shall constitute a "County Event of Default" hereunder:
 - i. the County fails to make timely undisputed payments as described in this Agreement;
 - ii. the County breaches Confidential Information Section of this Agreement; or the County fails to perform any of the other material provisions of this Agreement.
2. **Cure Provisions** - Upon the occurrence of a County Event of Default as set out above, Contractor shall provide written notice of such County Event of Default to the County ("Notice to Cure"), and the County shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the County Event of Default described in the written notice.
3. **Termination for Cause by the Contractor** - In the event the County fails to cure a County Event of Default as authorized herein, Contractor may terminate this Agreement in whole or in part effective on receipt by the County of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the Contractor.

C. Termination for Convenience

1. Notwithstanding any other provision herein, the County may terminate this Agreement, without cause, by giving 30 days advance written notice to the Contractor of its election to terminate this Agreement pursuant to this provision.

26. Time is of the Essence

Time is of the essence with respect to all provisions of this Agreement that specify a time for performance, including the Services as described in the Exhibits attached hereto; provided, however, that the foregoing shall not be construed to limit a Party's cure period allowed in the Agreement.

27. Confidential Information and Public Records

- A. **County Confidential Information** - Contractor shall not disclose to any third-party County Confidential Information that Contractor, through its Contractor Personnel, has access to or has received from the County pursuant to its performance of Services pursuant to the Agreement, unless approved in writing by the County Contract Manager. All such County Confidential Information will be held in trust and confidence from the date of disclosure by the County, and discussions involving such County Confidential Information shall be limited to Contractor Personnel as is necessary to complete the Services.

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- B. **Contractor Confidential Information** - All Contractor Confidential Information received by the County from Contractor will be held in trust and confidence from the date of disclosure by Contractor and discussions involving such Contractor Confidential Information shall be limited to the members of the County's staff and the County's subcontractors who require such information in the performance of this Agreement. The County acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor in the Contractor Confidential Information during and after the term of the Agreement and shall at all times maintain the confidentiality of the Contractor Confidential Information provided to the County, subject to federal law and the laws of the State of Florida related to public records disclosure. Contractor shall be solely responsible for taking any and all action it deems necessary to protect its Contractor Confidential Information except as provided herein. Contractor acknowledges that the County is subject to public records legislation, including but not limited to Chapter 119, Florida Statutes, and the Florida Rules of Judicial Administration, and that any of the County's obligations under this Section may be superseded by its obligations under any requirements of said laws.
- C. **Public Records** - Contractor acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, including but not limited to the Section 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, the Contractor agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement.

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 agreement, the contractor shall contact:

Pinellas County Board of County Commissioners
Purchasing and Risk Management Division
400 S. Ft. Harrison Ave, 6th Floor,
Clearwater, FL 33756
Public Records Liaison
Phone: 727-464-3237
Email: mcchartier@pinellas.gov

28. Audit

Contractor shall retain all records relating to this Agreement for a period of at least 5 years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to examine and/or audit such records.

29. Digital Accessibility

Contractor acknowledges and warrants that all digital content and services provided under this contract conforms and shall continue to conform during the Term of this Agreement to the W3C Web Content Accessibility Guidelines, version 2.0 ("WCAG 2.0") at conformance Level A and AA. If all digital content and services does not fully conform to WCAG 2.0 A and AA, Contractor shall advise Pinellas County in writing of the nonconformance prior to execution of this Agreement and shall provide Pinellas County a plan to achieve conformance to WCAG 2.0 A and AA, including but not limited to, an intended timeline for conformance. Failure to achieve conformance, as determined in Pinellas County's sole discretion, on its intended timeline shall be considered a material breach of this Agreement and grounds for termination by Pinellas County.

If during the Term of this Agreement, Contractor fails to maintain compliance with WCAG 2.0 A and AA or Pinellas County otherwise identifies an issue related to accessibility of the product (the "Accessibility Issue") that renders the product inaccessible, then Pinellas County shall notify Contractor of non-compliance. Within 30 days of Contractor's receipt of a non-compliance notice ("Notice"), Contractor and Pinellas County shall meet and mutually agree upon an appropriate timeline for resolution of the Accessibility Issue(s) ("Initial Meeting").

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Should Contractor:

- i. fail to acknowledge receipt of the notice within 30 days of receipt of the Notice;
- ii. unreasonably and solely withhold agreement regarding a timeline for resolution for more than 30 days following the Initial Meeting; or
- iii. fail to materially resolve the Accessibility Issue(s) within the agreed-upon timeline,

Failure to comply with the requirements of this section shall constitute a material breach of this Agreement and shall be grounds for termination of this Agreement by Pinellas County and subject Contractor to the Liability and Insurance – Indemnification Section of this Agreement, “Indemnification.”

30. Liability and Insurance

- A. **Insurance** - Contractor shall comply with the insurance requirements set out in the Insurance Exhibit, attached hereto and incorporated herein by reference.
- B. **Indemnification** - Contractor agrees to indemnify, pay the cost of defense, including attorney’s fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney’s fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers’ Compensation Law; or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; or for any violation of requirements of the Americans with Disabilities Act of 1990, as may be amended, and all rules and regulations issued pursuant thereto (collectively the “ADA”) except when such injury, damage, or violation was caused by the sole negligence of the County.
- C. **Liability** - Neither the County nor Contractor shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other Party. Neither the County nor Contractor shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized hereunder. The County shall have no liability or obligation for any damages to any person or property directly or indirectly arising out of the operation by Contractor of its business, whether caused by Contractor’s negligence or willful action or failure to act.
- D. **Contractor’s Taxes** - The County will have no liability for any sales, service, value added, use, excise, gross receipts, property, workers’ compensation, unemployment compensation, withholding or other taxes, whether levied upon Contractor or Contractor’s assets, or upon the County in connection with Services performed or business conducted by Contractor. Payment of all such taxes and liabilities shall be the responsibility of Contractor.

31. County’s Funding

The Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of the Agreement beyond the fiscal year in which this Agreement is executed. No liability shall be incurred by the County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. The County agrees to promptly notify Contractor in writing of such failure of appropriation, and upon receipt of such notice, this Agreement, and all rights and obligations contained herein, shall terminate without liability or penalty to the County.

32. Survival

The provisions of this Agreement shall survive the expiration or termination of this Agreement.

AGREEMENT**33. Notices**

All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are: (1) deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (2) sent by air express courier (e.g., Federal Express, Airborne, etc.), charges prepaid, return receipt requested; or (3) sent via email and addressed as set forth below, which designated person(s) may be amended by either Party by giving written notice to the other Party:

For County:

Attn: Dontrell Smith

Pinellas County Utilities Wastewater Treatment Manager

Pinellas County Utilities

7401 54th Avenue North

Saint Petersburg, FL 33709

dsmith@pinellas.gov

with a copy to:

Attn: Merry Celeste,

Purchasing and Risk Management Division Director

Pinellas County Purchasing Department

400 South Fort Harrison Avenue

Clearwater, FL 33756

mceleste@pinellas.gov

For Contractor:

Attn: Ray Sibbitt

Director of Bulk/ Municipal Development

1450 Highway 136 West, PO Box 20

Henderson, KY 42419

rsibbitt@brenntag.com

34. Conflict of Interest

- A. The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Services required hereunder, and that no person having any such interest shall be employed by Contractor during the agreement term and any extensions.
- B. The Contractor shall promptly notify the County in writing of any business association, interest, or other circumstance which constitutes a conflict of interest as provided herein. If the Contractor is in doubt as to whether a prospective business association, interest, or other circumstance constitutes a conflict of interest, the Contractor may identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion as to whether the business association, interest or circumstance constitutes a conflict of interest if entered into by the Contractor. The County agrees to notify the Contractor of its opinion within (10) calendar days of receipt of notification by the Contractor, which shall be binding on the Contractor.

AGREEMENT**35. Right to Ownership**

All work created, originated and/or prepared by Contractor in performing Services pursuant to the Agreement, to the extent that such work, products, documentation, materials or information are described in or required by the Services (collectively, the "Work Product") shall be County's property when completed and accepted, if acceptance is required in this Agreement, and the County has made payment of the sums due therefore. The ideas, concepts, know-how or techniques developed during the course of this Agreement by the Contractor or jointly by Contractor and the County may be used by the County without obligation of notice or accounting to the Contractor. Any data, information or other materials furnished by the County for use by Contractor under this Agreement shall remain the sole property of the County.

36. Amendment

This Agreement may be amended by mutual written agreement of the Parties hereto.

37. Severability

The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

38. No Third-Party Beneficiary

The Parties hereto acknowledge and agree that there are no third-party beneficiaries to this Agreement. Persons or entities not a party to this Agreement may not claim any benefit from this Agreement or as third-party beneficiaries hereto.

39. Force Majeure

"Force Majeure Event" means any act or event that (i) prevents a Party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other Party's (the "Performing Party") obligations under this Agreement, (ii) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (iii) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. Force Majeure Event(s) do not include economic hardship, changes in market conditions or insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance and thereby prevented from satisfying any conditions precedent to the Performing Party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. The Nonperforming Party must promptly notify the Performing Party upon the occurrence of a Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the Performing Party's obligations, the Nonperforming Party will resume performance under this Agreement without undue delay. Each Party will use commercially reasonable efforts to mitigate the effect of a Force Majeure Event.

AGREEMENT**40. Order of Precedence**

All Exhibits attached and listed below are incorporated in their entirety into, and form part of this Agreement and will have priority in the order listed

- A. Pinellas County Agreement
- B. Exhibit A - Statement of Work
- C. Exhibit B - Insurance Requirements
- D. Exhibit C - Payment Schedule
- E. Exhibit D - Payment/Invoices
- F. Exhibit E - Dispute Resolution for Pinellas County Board of County Commissioners in Matters of Invoice Payments
- G. Exhibit F - Materials Mandatory Affidavit of Compliance

In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement will prevail.

41. Entirety

This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

(Signature Page Follows)

AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written.

PINELLAS COUNTY, FLORIDA


By and through its

Board of County Commissioners

By: 
Janet C. Long, Chair

Brenntag Mid-South, Inc.

Name of Firm

By: 
Signature

Ray Sibbitt

Print Name

Director of Mini Bulk / Municipal Development


Title

ATTEST: KEN BURKE, CLERK

By: 
By:



APPROVED AS TO FORM

By: 
Office of the County Attorney

AGREEMENT

EXHIBIT A - STATEMENT OF WORK**A. OBJECTIVE:**

Pinellas County Utilities (PCU) is requesting bids for supply of Membrane Grade Sodium Hydroxide (Caustic Soda, 25% and 50% Liquid NaOH) to various locations within Pinellas County, on an as needed basis.

B. SITE LOCATIONS:

Item	Location	Product	Storage Capacity	Estimated Annual Quantity
1	South Cross Bayou Wastewater Treatment Facility 7401 54 th Avenue North St. Petersburg, Florida 33709	25% Sodium Hydroxide (NaOH)	900 Gallons	4,000 Gallons
2	Regional Treatment Facility 3655 Keller Circle Tarpon Springs, Florida 34689	25% Sodium Hydroxide (NaOH)	30,000 Gallons	100,000 Gallons
3	Solid Waste Treatment Facility 2861 110 th Avenue North St. Petersburg, Florida 33716	50% Sodium Hydroxide (NaOH)	Two (2) Tanks 5,500 Gallons	70,000 Gallons

C. REQUIREMENTS:

- Product shall be Membrane Grade Sodium Hydroxide (25% and 50% Liquid NaOH), destination/freight included (FOB). Chemicals supplied under this specification must meet or exceed the requirements of the latest ANSI/AWWA B501 for use in drinking water, wastewater or reclaimed water and the American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60. The Sodium Hydroxide provided under this specification shall contain no soluble or insoluble material, either organic or inorganic, capable of producing deleterious or injurious effects on the health of those consuming water properly treated with the sodium hydroxide. (See Exhibit F, Signature of Affidavit of Compliance).
- The Sodium Hydroxide supplied under this specification shall not contain any impurities in sufficient quantities which causes or may cause a violation of any existing maximum contaminant level (MCL) or any newly regulated MCL which may be passed into law during the life of this contract. Should an MCL violation be determined to be directly attributable to the Sodium Hydroxide material supplied for use, the Contractor shall immediately take the necessary steps to remove or reduce the contaminant levels of its material to levels satisfactory to PCU. PCU reserves the right to add or delete specific impurity listings and maximum impurity levels to the existing listing, as is required to meet all USEPA, SDWA, and FDEP water quality standards. The Contractor shall comply with any and all such changes required to its Sodium Hydroxide material, by whatever process changes required, at no additional cost to PCU.

At a minimum, the report shall contain the following:

- Date and time of manufacture/production
- Date and time of sample
- Percent weight of Sodium Hydroxide
- Specific Gravity referenced to a temperature
- Color
- Suspended Solids test time
- Sodium Carbonate as Na₂CO₃
- Sodium Chloride as NaCl
- Sodium Oxide as Na₂O

AGREEMENT**4. Quality Assurance, Safety, Training, and Certification:**

- a) Contractor shall supply an affidavit, signed by a corporate designated official, before award recommendation certifying that the Liquid Sodium Hydroxide furnished by the Contractor complies with all applicable requirements of this specification and AWWA Standard B501, latest edition. The affidavit shall also indicate compliance with Water Chemicals Codex directives, the latest revision, for impurity limits.
- b) At the sole discretion of the County, the contractor's delivery personnel (driver) may be asked to collect a sample of hydroxide before the shipment is unloaded. In this case, the County will supply the sample container, and the driver shall collect the sample from the tank truck, provide a chain of custody and turn it over to the County for analysis. The sample shall be considered representative of the lot.

Sampling and testing of Shipment after unloading – The County reserves the right to subject samples of the hydroxide to complete analyses to ensure that it meets EPA specifications, the latest AWWA 501 specifications, and the supplemental specifications included in this document.

- c) The County reserves the right to subject samples of the Sodium Hydroxide to quick analysis to ensure that it meets basic conditions of AWWA B501, the latest and the specifications listed herein. Any lot tested by the County that fails to comply with the specifications shall constitute grounds for rejection of that lot. No payment shall be made for hydroxide that is rejected. The Contractor or its subcontractors shall allow 45 minutes for this testing to be completed. If testing cannot be completed within the 45-minute period, the County shall allow the Contractor to unload the shipment. Failure to comply with any specification three (3) consecutive times, or five (5) times over the duration of this contract shall constitute sufficient grounds for termination of the contract between the County and the Contractor.

- d) **ANSI/NSF Certification Requirement.**

- i. The Contractor shall provide with bid submittal ANSI/NSF certification that the Liquid Sodium Hydroxide to be provided is approved for potable water treatment, wastewater or reclaim water and meets the NSF International Standard 60.
 - ii. It is the responsibility of the Contractor to inform the County that NSF certification has been revoked or lapsed within 24 hours of the time the Contractor receives verbal or written notification. Loss of certification shall constitute sufficient grounds for immediate termination of the contract between the County and Contractor.

5. Manufacturer's Laboratory Reports:

A certification of analysis of the product from the manufacturer shall be submitted for each Sodium Hydroxide delivery to the County. No deliveries will be accepted by the County unless accompanied by certified laboratory report for the specific batch of Sodium Hydroxide delivered showing the below data that it conforms to the required specifications. The report shall contain the following data:

- a) Date and time of manufacture/production
- b) Date and time of sampling
- c) Lot Number
- d) Percent by Weight Sodium Hydroxide (NaOH)
- e) Color
- f) Specific Gravity Referenced to a temperature
- g) Suspended Solids Test Time Sodium Oxide (NA2O)

AGREEMENT**6. Quarterly Reports:**

At the start of the contract, and every 90 days, the Contractor (at their expense) shall utilize an outside testing agency acceptable to both the County and the Contractor to analyze a sample of the Sodium Hydroxide delivered to the County for the below parameters. Testing laboratory should be certified under the National Environmental Laboratory Accreditation Program (NELAP) by the Florida Department of Health (FDOH). The Contractor shall supply the sample container and the driver shall collect the sample from the tank truck. This sample will be given to the County and to the acceptable testing agency at the time of the sample. Any failure to comply with the specifications shall constitute grounds for cancellation of the contract between the County and the Contractor.

At a minimum the report shall contain the following:

- a) Date and time of manufacture/production
- b) Date and time of sample
- c) Percent by Weight Sodium Hydroxide
- d) Color
- e) Specific Gravity (Referenced to a temperature)
- f) Suspended Solids Test Time
- g) Sodium Carbonate as Na_2CO_3
- h) Sodium Chloride as NaCl
- i) Sodium Oxide as Na_2O Color

Charges for the manufactures certified report and all quarterly reports by outside testing agencies shall be included in the bid price.

7. Safety Data Sheet (SDS):

In compliance with OSHA 29 CFR 1910.119 App A (Hazardous Materials) Standard, Contractor shall provide the current SDS for any chemical delivered by the contractor at the time of delivery. The SDS shall be maintained by the user agency for the purpose of informing employees of the hazards associated with the chemical, the medical and emergency responses recommended by the manufacturer, storage and handling procedures, and other required information related to the chemical being transported, delivered, stored, and used.

8. Emergency Plan of Action and Safety Training:

At the Pre-commencement meeting, the Contractor shall provide a written safety plan for transport, and handling of sodium hydroxide. The safety plan shall include an emergency contingency plan for each location covered under this Agreement.

The Contractor shall be responsible for the conduct of any subcontractor used in lieu of their employees the delivery of equipment or from a failure of attendant delivery personnel in the proper performance of their duties. Proper performance shall require attendant delivery personnel's constant inspection and observation of unloading operations and knowledgeable response to problems or emergencies. The County reserves the right to refuse any all deliveries made with equipment that is poorly maintained and/or leaking Sodium Hydroxide.

In addition, the proper spill response notification procedure, along with any forms required by all local, state, or federal regulatory agencies, shall be supplied by the Contractor. This section in no way relieves the Contractor of his responsibility to notify the proper regulatory agencies of a spill incident. In the event of a spill or leak, the Contractor shall supply the necessary personnel to respond to such an event, to work with the local Hazardous Materials Response Team, and manage and oversee "after-event" cleanup efforts. Should a spill or leak occur, caused by the Contractor's personnel, equipment, or method of delivery, the Contractor shall immediately comply with all applicable terms and conditions of the current version of Title III, Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.S. 11001, et seq. (SARA) and the Florida Hazardous Materials Emergency Response and Community Right-to-Know Act of 1988, Ch. 252, Part II, Florida Statutes.

AGREEMENT

The responsibility for compliance with federal and state rules and regulations regarding the Contractor caused spills or releases shall be the sole responsibility of the Contractor. The Contractor shall hold the County harmless for any failure to properly report and/or comply with this provision.

9. Safe Handling Training: At the request of the County, the Contractor shall provide training on the safe handling of Liquid Sodium Hydroxide at each location covered under this Agreement.
10. Technical Assistance: The Contractor shall provide technical assistance, at no charge to the County, regarding the application of its product and disposal and handling of the residues and sludge produced by the application of Sodium Hydroxide in the water treatment process as needed.
11. Delivery, Carrier Tanker, Storage and Handling:
 - a) Bulk delivery of Sodium Hydroxide shall be shipped in properly cleaned chemical tank trucks and equipment to, but not limited to, the locations identified in section B above. Bulk delivery shall be in lots of approximately 3,500 to 4,000 (full tanker load) gallons. Delivery sites and quantities are subject to deletions or additions as necessary to meet the water production/treatment demands of the county. Less than tanker loads (LTL) may be requested by the county, when needed. Sites may require delivery in smaller truck size (ex: 2,750 gallons) due to access issues and will be coordinated between the county and contractor.
 - b) Contractor shall be responsible for transferring Sodium Hydroxide into County storage tanks and shall provide all necessary, properly cleaned, and maintained, hoses, fittings, pumps, compressors, etc., required to efficiently "off-load" the Sodium Hydroxide into designated storage tanks, and truck shall also carry a minimum of two (2) properly cleaned sections of 2" transfer hose for hook-up to 2" fill line with male cam-lock fittings. Tanker trucks shall comply with applicable U.S. Department of Transportation (DOT) specifications. If the Contractor is unable to unload a complete bulk delivery due to Contractor's fault, the unit price will remain at the bulk delivery rate. The Contractor shall be responsible for ascertaining the correct storage tanks and fill point locations to prevent accidental discharge of product into wrong storage tank(s).
 - c) Contractor shall ensure their employees, and subcontractor's employees use personal protective equipment (PPE), as recommended by the chemical's manufacturer, and described in the SDS. PPE shall meet the requirements described by OSHA 29 CFR 1910.132 (General Requirements), and appropriate ANZI Standard for the particular PPE.
 - d) Driver must remain within a safe proximity while the transfer is in progress and continuously monitor for leaking hoses, connections, or other problems. Driver shall ensure a County operator is present prior to unloading product. It is the responsibility of the driver to have the proper equipment, contain leaks, and report any, and all spills.
 - e) Contractor shall be responsible for injuries, cost of cleanup, repair of facilities, and replacement of chemical product(s) in the event of accidental discharge of product into wrong storage tanks. If a third-party shipper should be used, the Contractor assumes responsibility for them.
 - f) Packaging and shipment of Sodium Hydroxide shall conform to all current regulations of the State of Florida, the United States Department of Transportation, or other applicable regulatory agencies.
 - g) If bulk delivery is made using a third party, a wash ticket must be provided with each shipment showing that the tanker was thoroughly cleaned, as well as the materials the carrier transported in the vehicle prior to transporting the chemical to the County facility.
 - h) All deliveries of Sodium Hydroxide shall be made to the County within 48 hours after receipt of order or as agreed to by both parties.
 - i) Delivery time of day shall be as arranged upon placement of order and shall be between the hours of 7:00 AM and 2:30 PM EST. Request to deviate from schedule must be confirmed with the County twenty-four (24) hours prior to scheduled delivery and must conform to delivery conditions set forth in this specification. Deliveries made to unmanned facilities must be coordinated with the County so driver can gain access to the facility.

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- j) Contractor must make "emergency" deliveries within 24 hours after receipt of order. An emergency delivery is defined as a delivery which is necessary in order to prevent the County from running out of Sodium Hydroxide in less than 24 hours. The County shall endeavor to minimize the number of "emergency" deliveries.
- k) The County reserves the right to change quantities and delivery dates at their discretion within a 24-hour notice.
- l) Delivery shipments shall be rejected which fail to meet any contract specifications stated in this document. In the event a delivery shipment is rejected by the County, upon notification of Contractor that the shipment is rejected, Contractor shall be required to ship a replacement delivery to the affected location within six (6) hours from the time of notification. Failure to provide replacement product that meets the specifications of this agreement in the manner above will constitute failure to comply with the delivery requirements set forth in this document. Failure to comply with this specification three (3) times over the duration of this contract shall constitute sufficient grounds for termination of the contract between the County and the Contractor.

12. Security

At the Pre-commencement meeting, the Contractor shall provide a list of names and drivers' licenses of representatives and delivery personnel authorized as per below and by the Contractor to enter County facilities on their behalf. This list will be kept current with any personnel changes being reflected on the list. All drivers and Contractor representatives must be escorted by a Pinellas County representative at all times when located on County property.

- a) All delivery truck tankers will be sealed (hatch covers, valves, etc.) with a security tag and serial number after the truck has been loaded and ready to leave chemical supplier's terminal. Bulk deliveries must arrive with an intact security seal. Serial number must be communicated to Pinellas County prior to receipt and match the truck seal. Broken, missing or any signs of possible tampering will be cause for refusal of the delivery.
- b) Prior to delivery, Contractor will email County facility with security seal number, Certificate of Analysis, driver name and copy of driver's license. Upon arrival to County facility, Contractor's driver or representative must produce photo ID and appropriate company identification and sign in and out of County facility as required.
- c) All delivery paperwork (bill of lading, weight certificates, certificates of analysis, truck placards, etc.) will be inspected and must be in order and consistent with the material ordered. Any discrepancies may be cause for refusal if not resolved to the satisfaction of Pinellas County.

The delivery report and shall contain the following data:

- i. Date and time of manufacture/production
- ii. Lot Number
- iii. Trailer Number
- iv. Quantity
- v. Sodium Hydroxide Concentration
- vi. Sodium Oxide Content Percentage by Weight
- vii. Specific Gravity (Referenced to a temperature)
- viii. Color

AGREEMENT**D. DELIVERY, STORAGE AND HANDLING:**

1) Delivery –

- a. Delivery shall be within 48 hours of receipt of Standard Purchase Order. Delivery time of day shall be as arranged upon placement of order and shall be between the hours of 7:00 A.M. and 2:30 P.M. EST. Request to deviate from schedule must be confirmed by the contractor with the ordering facility at least 48 hours prior to scheduled delivery and must conform to delivery conditions set forth in this specification. The ordering facility reserves the right to change quantities and delivery dates at their discretion with a 24-hour notice. Split deliveries to multiple delivery locations will be coordinated and accepted by PCU to encourage economical delivery of product via bulk tankers dependent on storage capacities at time of delivery.
- b. At the sole discretion of PCU, the Contractor's delivery personnel (driver) may be asked to collect a sample of 25% Sodium Hydroxide before the shipment is unloaded. PCU will supply the sample container and the driver shall collect the sample from the tank truck, provide a chain of custody and turn it over to PCU for analysis. The sample shall be considered representative of the lot.
- c. Prior to shipping, the Contractor shall be required to fax/email an affidavit (Certificate of Analysis), signed by a corporate designated official, certifying that the liquid Sodium Hydroxide furnished by the Contractor complies with all applicable requirements of this specification.

2) Carrier Tanker Requirements –

- a. The Contractor will be required to supply a list of all drivers at the Pre-commencement meeting that will be making chemical deliveries to the delivery location(s). All delivery truck tankers will be sealed (hatch covers, valves, etc.) with a security tag and serial number after the truck has been loaded and ready to leave chemical supplier's terminal.
- b. Prior to shipping chemical for delivery, the Contractor will be required to fax/email, within 24-hours of scheduled delivery, to the delivery location(s) a photo ID with the name of the delivery driver, the tanker license number, the security tag, and serial number information for each Sodium Hydroxide delivery made to the facility. The delivery report and shall contain the following data:
 - i. Date and time of manufacture/production
 - ii. Lot Number
 - iii. Trailer Number
 - iv. Quantity
 - v. Sodium Hydroxide Concentration
 - vi. Sodium Oxide Content Percentage by Weight
 - vii. Specific Gravity (Referenced to a temperature)
 - viii. Color
- c. Liquid Sodium Hydroxide solution will be shipped in properly cleaned chemical tank trucks in lots of minimum shipment volume of approximately 3,500 gallons each, as required for Delivery Locations # 2; and lots of minimum shipment volume of approximately 500 gallons located within Delivery Location # 1 as required. See Delivery Location Table above (Exhibit A, Section B.: SITE LOCATIONS). Carrier will be able to transfer contents using the self-contained compressor system on tanker truck. Truck shall also carry a minimum of two (2) sections of 2" transfer hose for hook-up to 2" fill line with male cam-lock fittings. Tank trucks shall comply with applicable U.S. Department of Transportation (DOT) specifications.
- d. Delivery shipments shall be rejected which fail to meet any contract specifications stated in this document. In the event a delivery shipment is rejected by PCU, upon notification to Contractor that the shipment is rejected, the Contractor shall be required to ship a replacement delivery to the affected location within six (6) hours from the time of notification. Failure to provide replacement product that meets the specifications of this agreement in the manner above will constitute failure to comply with the delivery requirements set forth in this document.

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3) Driver Requirements –

- a. Driver must have personal protective equipment to include chemical goggles, transparent face shield and hardhat, rubber gloves, rubber boots, and rubber or plastic-coated fabric apron or slicker suit. Driver must wear a minimum of chemical goggles and rubber gloves when handling hose and valves.
- b. Driver must remain within a safe proximity while the transfer is in progress and continuously monitor for leaking hoses, connections, or other problems. Driver shall ensure a PCU operator is present prior to unloading product. It is the responsibility of the driver to contain leaks and to report any and all spills.

E. EMERGENCY SPILLS:

The Contractor shall include an emergency spill response plan with the appropriate emergency response personnel names and telephone contact numbers (24-hour contact numbers) at Pre-commencement meeting. In addition, the proper spill response notification procedure, along with any forms required by all local, state, or federal regulatory agencies, shall be included by Contractor. This section in no way relieves the Contractor of his responsibility to notify the proper regulatory agencies of a spill incident. In the event of a spill or leak, the Contractor shall supply the necessary personnel to respond to such an event to work with the local Hazardous Materials Response Team and to manage and oversee After Event cleanup efforts. In the event of a spill or leak caused solely by the County, the Contractor will not be held responsible. Should a spill or leak occur, caused by Contractor's personnel, equipment, or method of delivery Contractor shall immediately comply with all applicable terms and conditions of the current version of Title III, Superfund Amendments and Reauthorization Act of 1986.42 U.S.C.S.11001 et seq. (SARA) and the Florida Hazardous Materials Emergency Response and Community Right-to-Know Act of 1988 Part II Florida Statutes. The responsibility for compliance with Federal and State Rules and Regulations regarding Contractor caused spills or releases shall be the sole responsibility of the Contractor. The Contractor shall hold PCU harmless for any failure to properly report and/or comply with this provision.

F. OCCUPATIONAL HEALTH AND SAFETY:

Contractor shall be responsible for adhering to "all" federal, state, and local laws, regulations, standards, and policies related to the work outlined within the statement of work (SOW).

In compliance with OSHA 29 CFR 1910.119 App A (Hazardous Materials) Standard, Contractor shall provide the current SDS for any chemical delivered by the contractor at the time of delivery. The SDS shall be maintained by the user agency for the purpose of informing employees of the hazards associated with the chemical, the medical and emergency responses recommended by the manufacturer, storage and handling procedures, and other required information related to the chemical being transported, delivered, stored, and used.

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EXHIBIT B - INSURANCE REQUIREMENTS

- A. Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the Bid and/or contract period.
- B. If any insurance provided pursuant to the Agreement expires or cancels prior to the completion of the Work, you will be notified by CTrax, the authorized Contractor of Pinellas County. Upon notification, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished to Pinellas County Risk Management at InsuranceCerts@pinellas.gov and to CTrax c/o JDi Data at PinellasSupport@ididata.com by the Contractor or their agent prior to the expiration date.
 1. Contractor shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said Contractor from its insurer. Notice shall be given by email to Pinellas County Risk Management at InsuranceCerts@pinellas.gov. Nothing contained herein shall absolve Contractor of this requirement to provide notice.
 2. Should the Contractor, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement,
- C. If subcontracting is allowed under this Bid, the Primary Contractor shall obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any subcontractors to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the subcontractor; but in no event will the insurance limits be less than \$500,000 for Workers' Compensation/Employers' Liability, and \$1,000,000 for General Liability and Auto Liability if required below.
 1. All subcontracts between the Contractor and its Subcontractors shall be in writing and are subject to the County's prior written approval. Further, all subcontracts shall.
 - a. Require each Subcontractor to be bound to the Contractor to the same extent the Contractor is bound to the County by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the Subcontractor;
 - b. Provide for the assignment of the subcontracts from the Contractor to the County at the election of Owner upon termination of the Contract;
 - c. Provide that County will be an additional indemnified party of the subcontract;
 - d. Provide that the County will be an additional insured on all insurance policies required to be provided by the Subcontractor except workers compensation and professional liability;
 - e. Provide a waiver of subrogation in favor of the County and other insurance terms and/or conditions
 - f. Assign all warranties directly to the County; and
 - g. Identify the County as an intended third-party beneficiary of the subcontract. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Section C and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.
- E. Each insurance policy and/or certificate shall include the following terms and/or conditions:
 1. The Named Insured on the Certificate of Insurance and insurance policy must match the entity's name that responded to the solicitation and/or is signing the agreement with the County.
 2. Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.
 3. The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.

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4. All policies shall be written on a primary, non-contributory basis.

The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

- 1) **Workers' Compensation Insurance:** Worker's Compensation Insurance is required if required pursuant to Florida law. If, pursuant to Florida law, Worker's Compensation Insurance is required, employer's liability, also known as Worker's Compensation Part B, is also required in the amounts set forth herein.

Limits	Florida Statutory
Employers' Liability Limits	
Per Employee	\$ 500,000
Per Employee Disease	\$ 500,000
Policy Limit Disease	\$ 500,000

If Contractor is not required by Florida law, to carry Workers Compensation Insurance in order to perform the requirements of this Agreement, County Waiver Form for workers compensation must be executed, submitted, and accepted by Risk Management. Failure to obtain required Worker's Compensation Insurance without submitting and receiving a waiver from Risk Management constitutes a material breach of this Agreement.

- 2) **Commercial General Liability Insurance:** including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury. No explosion, collapse, or underground damage exclusions allowed.

Limits	
Combined Single Limit Per Occurrence	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal Injury and Advertising Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000

- 3) **Business Automobile or Trucker's/Garage Liability Insurance** to cover owned, hired, and non-owned vehicles. If the Contractor does not own any vehicles, then evidence of Hired and Non-owned coverage is sufficient. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards, unless Contractor can show that this coverage exists under the Commercial General Liability policy.

Limits	
Combined Single Limit Per Accident	\$ 1,000,000

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- 4) **Excess or Umbrella Liability Insurance** excess of the primary coverage required, in paragraphs (1), (2), and (3) above:

Limits

Each Occurrence	\$ 4,000,000
General Aggregate	\$ 4,000,000

- 5) **Pollution Legal/Environmental Legal Liability Insurance** for pollution losses arising from all services performed to comply with this contract. Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage. If policy is written on a Claims Made form, a retroactive date is required, and coverage must be maintained for 3 years after completion of contract or "tail coverage must be purchased. Coverage should include and be for the at least the minimum limits listed below:

- i. Bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- ii. Defense including costs, charges and expenses incurred in the investigation, adjustment, or defense of claims for such compensation damages.
- iii. Cost of Cleanup/Remediation.

Limits

Per Claim or Occurrence	\$ 2,000,000
General Aggregate	\$ 2,000,000

For acceptance of Pollution Legal/Environmental Legal Liability coverage included within another policy coverage required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Pollution Legal/Environmental Legal Liability and other coverage combined.

- 6) **Property Insurance** Contractor will be responsible for all damage to its own property, equipment and/or materials.

AGREEMENT

EXHIBIT C - PAYMENT SCHEDULE

Item	Description	Sodium Hydroxide	Estimated Annual Quantity	Unit of Measure	Unit Price	Extended Total
1	Bulk Delivery – Tanker Load of 3,500 gallons	50%	70,000	Gallon	\$2.79	\$195,300.00
2	Less than Tanker Loads: Minimum Delivery of 500 gallons	50%	4,000	Gallon	\$3.14	\$12,560.00
3	Bulk Delivery – Tanker Load of 3,500 gallons	25%	100,000	Gallon	\$1.22	\$122,000.00
4	Less than Tanker Loads: Minimum Delivery of 500 gallons	25%	30,000	Gallon	\$2.44	\$73,200.00
LUMP SUM TOTAL FOR TWO (2) YEARS						\$806,120.00

AGREEMENT**EXHIBIT D - PAYMENT/INVOICES****PAYMENT/INVOICES:**

CONTRACTOR shall submit invoices for payment due as provided herein with such documentation as required by Pinellas County and all payments shall be made in accordance with the requirements of Section 218.70 et. seq, Florida Statutes, "The Local Government Prompt Payment Act." Invoices shall be submitted to the address below unless instructed otherwise on the purchase order, or if no purchase order, by the ordering department:

Finance Division Accounts Payable
Pinellas County Board of County Commissioners
P. O. Box 2438
Clearwater, FL 33757

Each invoice shall include, at a minimum, the Contractor's name, contact information and the standard purchase order number. In order to expedite payment, it is recommended the Contractor also include the information shown in below. The County may dispute any payments invoiced by CONTRACTOR in accordance with the County's Dispute Resolution Process for Invoiced Payments, established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

INVOICE INFORMATION:

Contractor Information Company name, mailing address, phone number, contact name and email address as provided on the PO

Remit To Billing address to which you are requesting payment be sent

Invoice Date Creation date of the invoice

Invoice Number Company tracking number

Shipping Address Address where goods and/or services were delivered

Ordering Department Name of ordering department, including name and phone number of contact person

PO Number Standard purchase order number

Ship Date Date the goods/services were sent/provided

Quantity Quantity of goods or services billed

Description Description of services or goods delivered

Unit Price Unit price for the quantity of goods/services delivered

Line Total Amount due by line item

Invoice Total Sum of all of the line totals for the invoice

Pinellas County offers a credit card payment process (ePayables) through Bank of America. Pinellas County does not charge Contractors to participate in the program; however, there may be a charge by the company that processes your credit card transactions. For more information, please visit Pinellas County purchasing website at (www.pinellascounty.org/purchase).

AGREEMENT

EXHIBIT E - DISPUTE RESOLUTION FOR PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS IN MATTERS OF INVOICE PAYMENTS:

Payment of invoices for work performed for Pinellas County Board of County Commissioners (County) is made, by standard, in arrears in accordance with Section 218.70, et. seq., Florida Statutes, the Local Government Prompt Payment Act.

If a dispute should arise as a result of non-payment of a payment request or invoice the following Dispute Resolution process shall apply:

- A. Pinellas County shall notify a Contractor in writing within 10 days after receipt of an improper invoice, that the invoice is improper. The notice should indicate what steps the Contractor should undertake to correct the invoice and resubmit a proper invoice to the County. The steps taken by the Contractor shall be that of initially contacting the requesting department to validate their invoice and receive a sign off from that entity that would indicate that the invoice in question is in keeping with the terms and conditions of the agreement. Once sign off is obtained, the Contractor should then resubmit the invoice as a "Corrected Invoice" to the requesting department which will initiate the payment timeline.
 1. Requesting department for this purpose is defined as the County department for whom the work is performed.
 2. Proper invoice for this purpose is defined as an invoice submitted for work performed that meets prior agreed upon terms or conditions to the satisfaction of Pinellas County.
- B. Should a dispute result between the Contractor and the County about payment of a payment request or an invoice then the Contractor should submit their dissatisfaction in writing to the Requesting Department. Each Requesting Department shall assign a representative who shall act as a "Dispute Manager" to resolve the issue at departmental level.
- C. The Dispute Manager shall first initiate procedures to investigate the dispute and document the steps taken to resolve the issue in accordance with section 218.76 Florida Statutes. Such procedures shall be commenced no later than 45 days after the date on which the payment request or invoice was received by Pinellas County and shall not extend beyond 60 days after the date on which the payment request or invoice was received by Pinellas County.
- D. The Dispute Manager should investigate and ascertain that the work, for which the payment request or invoice has been submitted, was performed to Pinellas County's satisfaction and duly accepted by the Proper Authority. Proper Authority for this purpose is defined as the Pinellas County representative who is designated as the approving authority for the work performed in the contractual document. The Dispute Manager shall perform the required investigation and arrive at a solution before or at the 60 days' timeframe for resolution of the dispute, per section 218.76, Florida Statutes. The County Administrator or his or her designee shall be the final arbiter in resolving the issue before it becomes a legal matter. The County Administrator or his or her designee will issue their decision in writing.
- E. Pinellas County Dispute Resolution Procedures shall not be subject to Chapter 120 of the Florida Statutes. The procedures shall also, per section 218.76, Florida Statutes, not be intended as an administrative proceeding which would prohibit a court from ruling again on any action resulting from the dispute.
- F. Should the dispute be resolved in the County's favor interest charges begin to accrue 15 days after the final decision made by the County. Should the dispute be resolved in the Contractor's favor the County shall pay interest as of the original date the payment was due.
- G. For any legal action to recover any fees due because of the application of sections 218.70 et. seq., Florida Statutes, an award shall be made to cover court costs and reasonable attorney fees, including those fees incurred as a result of an appeal, to the prevailing party. If it is found that the non-prevailing party held back any payment that was the reason for the dispute without having any reasonable lawful basis or fact to dispute the prevailing party's claim to those amounts.

23-0392-ITB
Sodium Hydroxide

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Exhibit F

MATERIALS MANDATORY AFFIDAVIT OF COMPLIANCEBid Title: **SODIUM HYDROXIDE**Bid Number: **23-0392-ITB**Name: Ray SibbittTitle: Director of Municipal DevelopmentCompany: Brenntag Mid-South IncI, Ray Sibbitt (Name), certify:

1. That I hold the above position with the above company and have been formally authorized through its governance system as an authorized representative to act for and on behalf of the company to create this affidavit.
2. That I hereby submit this bid to sell and deliver said chemicals to the Pinellas County Board of County Commissions Utilities Department strictly in accordance with the specifications herein including the requirements of paragraph C, page 21.

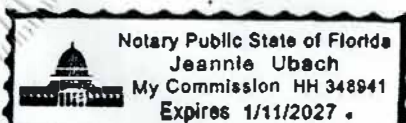
Dated: 4/20/2023Brenntag Mid-South Inc

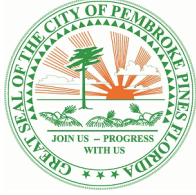
(Company Name)

By: Ray Sibbitt
(Signature/Title of Authorized Representative)

STATE OF FLORIDA
COUNTY OF PINELLAS

I, the undersigned Notary Public, do hereby affirm that Ray Sibbitt (Name) personally appeared before me on the 20th day of April (Month) 2023 (Year), and signed the above Affidavit in his/her capacity as Director of Municipal Development (Title) of Brenntag Mid-South (Company) on behalf of such company.

[Signature]
Notary (Name)
My Commission expires: 1/11/2027 (Date)



City of Pembroke Pines, FL

601 City Center Way
Pembroke Pines, FL
33025
www.ppines.com

Agenda Request Form

Agenda Number: 4.

File ID: 24-0150

Type: Purchase

Status: Passed

Version: 1

**Agenda
Section:**

In Control: City Commission

File Created: 02/13/2024

Short Title: Brenntag - Sodium Hydroxide

Final Action: 03/06/2024

Title: MOTION TO AUTHORIZE THE PURCHASE OF SODIUM HYDROXIDE 25% AND 50% BY WEIGHT ON AN AS-NEEDED BASIS FROM BRENNTAG MID-SOUTH, INC. UTILIZING THE PINELLAS COUNTY AGREEMENT BID# 23-0392-ITB FOR AN ESTIMATED ANNUAL AMOUNT NOT TO EXCEED \$61,720.00, PURSUANT TO SECTION 35.18(C)(5) OF THE CITY'S CODE OF ORDINANCES.

***Agenda Date:** 03/06/2024

Agenda Number: 4.

Internal Notes:

Attachments: 1. Brenntag Mid-South - Sodium Hydroxide (Caustic Soda) (VE), 2. Exhibit A - Agreement between Pinellas County and Brenntag 23-0392-ITB

Related Files:

1 City Commission 03/06/2024 approve Pass
Action Text: A motion was made to approve on the Consent Agenda
Aye: - 5 Mayor Ortis, Vice Mayor Siple, Commissioner Schwartz, Commissioner Castillo, and Commissioner Good Jr.
Nay: - 0

MOTION TO AUTHORIZE THE PURCHASE OF SODIUM HYDROXIDE 25% AND 50% BY WEIGHT ON AN AS-NEEDED BASIS FROM BRENNTAG MID-SOUTH, INC. UTILIZING THE PINELLAS COUNTY AGREEMENT BID# 23-0392-ITB FOR AN ESTIMATED ANNUAL AMOUNT NOT TO EXCEED \$61,720.00, PURSUANT TO SECTION 35.18(C)(5) OF THE CITY'S CODE OF ORDINANCES.

PROCUREMENT PROCESS TAKEN:

- Chapter 35 of the City's Code of Ordinance is titled "PROCUREMENT PROCEDURES, PUBLIC FUNDS."

- Section 35.18 of the City's Code of Ordinance is titled "COMPETITIVE BIDDING OR COMPETITIVE PROPOSALS REQUIRED; EXCEPTIONS."

- Section 35.18(C) states that "Only the following situations are exempt from the competitive bid and competitive proposal requirements of this section:"

- Section 35.18(C)(5) states that "Commodities or services that are the subject of contracts with the state its political subdivisions or other governmental entities including the United States government, are exempt from the competitive procurement process."

- Section 35.21 of the City's Code of Ordinances is titled "AWARD OF CONTRACT."

- Section 35.21(A) of the City's Code of Ordinances is titled "City Commission approval."

- Section 35.21(A)(1) states, "An initial purchase of, or contract for, commodities or services, in excess of \$25,000, shall require the approval of the City Commission, regardless of whether the competitive bidding or competitive proposal procedures were followed."

SUMMARY EXPLANATION AND BACKGROUND:

1. The Utilities Department Wastewater Treatment Plant (WWTP) requires the use of sodium hydroxide (NaOH) as part of the treatment process for odor control. The WWTP East Scrubber uses NaOH 50% by weight while the WWTP Central Air Scrubber uses NaOH 25% by weight.

2. For procurement of NaOH 25%, the Utilities Department previously utilized an agreement that was awarded to Allied Universal Corp. pursuant to the City of Pembroke Pines IFB# PSUT-17-11 "Sodium Hydroxide (Caustic Soda)". The agreement recently expired on February 22, 2024, with no further renewals.

3. For procurement of NaOH 50%, the Utilities Department currently utilizes pricing established by the Southeast Florida Governmental Cooperative Group (Co-Op) Bid # 2023-006 that was awarded to Univar Solutions USA, Inc. ("Univar") via the City of Margate as lead agency. The Co-Op agreement is for an initial one-year period from April 19, 2023, through April 18, 2024, with the current unit rates:

Description	NaOH by Weight	Price Per Gallon
Bulk Delivery (Over 3,500 Gallons)	50%	\$2.9265
Non-Bulk Delivery (Less than 3,500 Gallons)	50%	\$3.5429

4. Pinellas County awarded ITB # 23-0392 for Sodium Hydroxide to Brenntag Mid-South, Inc. ("Brenntag") and entered into an agreement for an initial two-year period commencing on July 18, 2023 through July 17, 2025, with the option to renew for two additional two-year renewal terms. The agreement includes bulk (tanker loads over 3,500 gallons) and non-bulk (loads between 500 and 3,500 gallons) deliveries for 25% and 50% caustic soda. Below are

Agenda Request Form Continued (24-0150)

the awarded rates:

NaOH by Price Per

Description	Weight	Gallon
Bulk Delivery (3,500 gallons)	50%	\$2.79
Non-Bulk Delivery (Less than 3,500 Gallons, over 500 gallons)	50%	\$3.14
Bulk Delivery (3,500 gallons)	25%	\$1.22
Non-Bulk Delivery (Less than 3,500 Gallons, over 500 gallons)	25%	\$2.44

Pursuant to the agreement "Unit prices adjustable (Decrease/Increase) at twelve (12) months after the date of award and thereafter annually for the life of the contract, in an amount not to exceed the average of the Consumer Price Index (CPI) or 10%, whichever is less, for all Urban Consumers, Series Id: CUUR0000SA0, Not Seasonally Adjusted, Area: U.S. city average, Item: All items, Base Period: 1982-84=100 for the twelve months prior. It is the Contractor's responsibility to request any pricing adjustment under this provision. For any adjustment to commence annually, the Contractor's request for adjustment shall be submitted between 90-120 days prior to contract anniversary date, utilizing the available index at the time of request. The Contractor adjustment request shall not be in excess of the relevant pricing index change. If no adjustment request is received from the Contractor, the County will assume the Contractor has agreed to continue without a pricing adjustment. Any adjustment request received outside of the 90-120-day period above shall not be considered."

5. Since the Brenntag agreement offers both NaOH 25% and 50%, and since the NaOH 50% rates are lower than our current agreement with Univar, Utilities Staff has concluded that the City would benefit by using the Brenntag agreement with Pinellas County for the procurement of NaOH.
6. The Central Air Scrubber, which uses NaOH 25%, has a 6,700-gallon holding tank and can accept bulk tanker loads. The annual estimated usage for NaOH 25% is 30,000 gallons at the bulk delivery rate of \$1.22, equating to an estimated annual cost of \$36,600.00.
7. The City's East Scrubber, which uses NaOH 50%, has a 900-gallon holding tank and can only accept non-bulk deliveries. The annual estimated usage for NaOH 50% is 8,000 gallons at the non-bulk delivery rate of \$3.14, equating to an estimated annual cost of \$25,120.00.
8. Staff recommends City Commission's authorization of the purchase of sodium hydroxide 25% and 50% by weight on an as-needed basis from Brenntag Mid-South, Inc. utilizing the Pinellas County agreement bid #23-0392-ITB for an estimated annual amount not to exceed \$61,720.00, pursuant to Section 35.18(C)(5) of the City's Code of Ordinances.

FINANCIAL IMPACT DETAIL:

- a) **Initial Cost:** \$61,720.00 annually.
- b) **Amount budgeted for this item in Account No:** \$61,720.00 is available in Account no. 471-535-6022-552430-0000-000-0000 (Operating chemicals)
- c) **Source of funding for difference, if not fully budgeted:** Not Applicable.
- d) **5 year projection of the operational cost of the project:** The agreement is for an

Agenda Request Form Continued (24-0150)

initial period through July 17, 2025, with the option to renew for two additional two-year renewal terms, subject to Pinellas County renewing it's agreement with Brenntag. The amounts below are pro-rated based on the 7 remaining months in the current fiscal year, and the 10 remaining months for the current term of the contract that ends in the next fiscal year. Please note that the contract allows for increases up to 10% annually commencing on July 18, 2024. The amounts shown below do not include the potential annual increase(s).

	Current FY 3/24 - 9/24	Year 2 10/24 - 7/25	Year 3	Year 4	Year 5
Revenues					
Expenditures	\$36,003.33	\$51,433.33			
Net Cost	\$36,003.33	\$51,433.33			

e) **Detail of additional staff requirements:** Not Applicable.

FEASIBILITY REVIEW:

A feasibility review is required for the award, renewal and/or expiration of all function sourcing contracts. This analysis is to determine the financial effectiveness of function sourcing services.

a) **Was a Feasibility Review/Cost Analysis of Out-Sourcing vs. In-House Labor Conducted for this service?** Not Applicable.

b) **If Yes, what is the total cost or total savings of utilizing Out-Sourcing vs. In-House Labor for this service?** Not Applicable.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/06/2024

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 have ADDITIONAL INSURED provisions or 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 Marsh USA LLC 1717 Arch Street Philadelphia, PA 19103-2797 CN101263979-ALL-GAW-24-25		CONTACT NAME: ... PHONE (A/C, No. Ext): E-MAIL ADDRESS: FAX (A/C, No):															
INSURED BRENNTAG NORTH AMERICA, INC. 5083 POTTSVILLE PIKE READING, PA 19605		INSURER(S) AFFORDING COVERAGE <table border="1"> <thead> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Insurance Company Of The State Of PA</td> <td>19429</td> </tr> <tr> <td>INSURER B : ACE American Insurance Company</td> <td>22667</td> </tr> <tr> <td>INSURER C : Indemnity Insurance Company of North America</td> <td>43575</td> </tr> <tr> <td>INSURER D : ACE Fire Underwriters Insurance Company</td> <td>20702</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER	NAIC #	INSURER A : Insurance Company Of The State Of PA	19429	INSURER B : ACE American Insurance Company	22667	INSURER C : Indemnity Insurance Company of North America	43575	INSURER D : ACE Fire Underwriters Insurance Company	20702	INSURER E :		INSURER F :	
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INSURER E :																	
INSURER F :																	

COVERAGES

CERTIFICATE NUMBER:

CLE-007182989-01

REVISION NUMBER: 3

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL LIABILITY GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			GL6634468	01/01/2024	01/01/2025	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> OTHER:			ISAH10700966	01/01/2024	01/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WLRC70319408 (AOS) SCFC70319482 (WI)	01/01/2024 01/01/2024	01/01/2025 01/01/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

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

Re: 23-0392-ITB Sodium Hydroxide

City of Pembroke Pines is included as Additional Insured except for Workers Compensation, where required by written contract. Where required by written contract this insurance is primary and non-contributory over any existing insurance and it is limited to liability arising out of the operations of the named insured and is subject to policy terms. Waiver of Subrogation is applicable where required by written contract. Environmental/Pollution Liability insurance is covered under Sudden and Accidental Release under General Liability.

CERTIFICATE HOLDER

City of Pembroke Pines
 601 City Center Way
 Pembroke Pines, FL 33025

CANCELLATION

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

Marsh USA LLC

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