

RESOLUTION NO. 24-33

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, RELATING TO THE PROCUREMENT OF 12.5 TRADE PERCENT SODIUM HYPOCHLORITE FOR THE TOWN OF DUNDEE WATER PLANT(S) AND WASTEWATER PLANT; ADOPTING FACTUAL FINDINGS REGARDING THE USAGE OF THE CITY OF LAKE WALES, FLORIDA, INVITATION TO BID NO. 23-540, COMPETITIVE SEALED BID PROCESS, SELECTION OF ODYSSEY MANUFACTURING COMPANY, INC., AND THE PIGGYBACKING OF THE AGREEMENT BETWEEN THE CITY OF LAKE WALES, FLORIDA, AND ODYSSEY MANUFACTURING COMPANY, INC.; AUTHORIZING AND APPROVING THAT FIRST AMENDMENT TO THE AGREEMENT FOR PURCHASE OF SODIUM HYPOCHLORITE WITH ODYSSEY MANUFACTURING COMPANY, INC., PERTAINING TO THE PROCUREMENT OF ULTRACHLOR 12.5 TRADE PERCENT SODIUM HYPOCHLORITE; AUTHORIZING THE TOWN MANAGER TO TAKE ANY NECESSARY AND FURTHER ACTION(S) TO INCLUDE, BUT NOT BE LIMITED TO, NEGOTIATING AND EXECUTING ANY AGREEMENT(S) AND TASK ORDER(S) AS THE TOWN MANAGER DEEMS NECESSARY AND APPROPRIATE WITH ODYSSEY MANUFACTURING COMPANY, INC., RELATED TO THE PURCHASE AND DELIVERY OF 12.5 TRADE PERCENT SODIUM HYPOCHLORITE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Dundee (hereafter the "Town") is a Florida municipal corporation vested with home rule authority pursuant to the Municipal Home Rule Powers Act (F.S. Chapter 166) and Article VIII, §2 of the Florida Constitution; and

WHEREAS, pursuant to Section 2(b), Article VIII of the Florida Constitution and Chapter 166, Florida Statutes, the Town is vested with governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services, including the general exercise of any power for municipal purposes; and

WHEREAS, pursuant to Section 2-159 of the Code of Ordinances of the Town of Dundee, Florida (hereafter the "Code"), which is entitled *source selection*, nothing prohibits the Town from renewing purchase order(s) or contract(s) provided the vendor was originally selected through a competitive selection process and such renewal is within the scope of the original purchase order and/or contract; and

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WHEREAS, the Town requires *Ultrachlor 12.5 Trade Percent Sodium Hypochlorite* for the Town's Water Treatment Plant(s) and Wastewater Treatment Plant in order to ensure continuity of the Town's utility services and operations; and

WHEREAS, pursuant to the 2-159(2) of the Code, the Code requires that, where the amount at issue greater than \$30,000.00, an Invitation For Bid (hereafter "ITB") competitive sealed bid process must be issued; and

WHEREAS, on October 10, 2023, at a duly noticed public meeting and pursuant to Section 2-159(c) of the Code, which is entitled *alternative source selection*, the Town Commission of the Town of Dundee (hereafter the "Town Commission") adopted *Town of Dundee Resolution No. 23-28* approving the emergency purchase of *Ultrachlor 12.5 Trade Percent Sodium Hypochlorite* from Odyssey Manufacturing Company, Inc.; and

WHEREAS, on August 15, 2023, the City of Lake Wales (hereafter "Lake Wales"), a Florida municipal corporation organized and existing under the laws of the State of Florida, advertised and/or published in a newspaper of general circulation in Polk County, Florida, a public notice (hereafter the "Notice") of the City of Lake Wales Invitation To Bid No. 23-540 (hereafter the "ITB No. 23-540"); and

WHEREAS, a copy of the Notice is attached hereto as **Exhibit "A"** and made a part hereof by reference; and

WHEREAS, ITB No. 23-540 was a competitive sealed bid procurement for Sodium Hypochlorite; and

WHEREAS, the Notice (see **Exhibit "A"**) is substantially the same as would be utilized by the Town to publicly announce its competitive sealed bid process for the purchase and delivery of *Ultrachlor 12.5 Trade Percent Sodium Hypochlorite* and is therefore adopted by the Town Commission as that notice required in accordance with Section 2-159(2)b of the Code; and

WHEREAS, copies of the ITB No. 23-540, along with applicable addenda, are attached hereto as **Composite Exhibit "B"** and made a part hereof by reference; and

WHEREAS, on August 29, 2023, in response to the Notice (see **Exhibit "A"**), Odyssey Manufacturing Company, Inc., submitted its *bid submission* (hereafter the "Odyssey Bid") to Lake Wales in and/or for ITB No. 23-540 (see **Composite Exhibit "B"**) for procurement of sodium hypochlorite; and

WHEREAS, copies of the Odyssey Bid are attached hereto as **Composite Exhibit "C"** and made a part hereof by reference; and

WHEREAS, the *bid open date* for ITB No. 23-540 (see **Composite Exhibit "B"**) was September 11, 2023; and

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WHEREAS, on September 12, 2023, at a duly noticed public meeting, Lake Wales found that Odyssey Manufacturing Company, Inc., was the apparent low-bidder and voted to award the bid for ITB No. 23-540 (see **Composite Exhibit “B”**) to Odyssey Manufacturing Company, Inc., for the purchase and delivery of sodium hypochlorite; and

WHEREAS, on September 12, 2023, Lakes Wales and Odyssey Manufacturing Company, Inc., entered into that certain *Agreement For Purchase of Sodium Hypochlorite* (hereafter the “Lake Wales Agreement”); and

WHEREAS, copies of the Lake Wales Memorandum, Staff Recommendation, Bid Tab Sheet, and Lake Wales Agreement are attached hereto as **Composite Exhibit “D”** and made a part hereof by reference; and

WHEREAS, on August 17, 2024, pursuant to the terms and conditions set forth in ITB No. 23-540 (see **Composite Exhibit “B”**) and Lake Wales Agreement (see **Composite Exhibit “D”**), Lakes Wales and Odyssey Manufacturing Company, Inc., entered into that certain *Agreement to Extend* (hereafter the “Renewal”) which renewed the Lake Wales Agreement for the period of October 1, 2024 to September 30, 2025; and

WHEREAS, a copy of the Renewal is attached hereto as **Exhibit “E”** and made a part hereof by reference; and

WHEREAS, the competitive sealed bid process(es) and procedure(s) utilized by Lake Wales are substantially the same as would be utilized by the Town of Dundee in order to adhere to and/or comply with Section 2-159(2) of the Code and is therefore adopted by the Town Commission as the ITB and/or *competitive sealed bid process* required for the procurement of *Ultrachlor 12.5 Trade Percent Sodium Hypochlorite*; and

WHEREAS, pursuant to Chapter 119 of the Florida Statutes and Section 2-159(2)d of the Code, the Town Commission has no reason to believe that the *bid opening* for ITB No. 23-540 (see **Composite Exhibit “B”**) and/or the public availability of the Odyssey Bid (see **Composite Exhibit “C”**) excluded the public from the process(es) utilized by Lake Wales and therefore finds that the *competitive sealed bid process(es)* used by Lake Wales were open to the public; and

WHEREAS, based on the Town Commission’s adoption of the *competitive sealed bid process* conducted by Lake Wales in and/or for ITB No. 23-540 (see **Composite Exhibit “B”**), the Town Commission adopts the same evaluation, bid sheet, and staff recommendation of Lake Wales (see **Composite Exhibit “D”**) and therefore finds that Odyssey Manufacturing Company, Inc., based on Odyssey Bid (see attached **Exhibit “C”**), is the lowest and responsive bidder whose bid meets the requirements and criteria set forth in the adopted ITB and/or *competitive sealed bid process* and as more specifically identified in this *Resolution No. 24-33*; and

WHEREAS, the *bid award* and/or selection of Odyssey Manufacturing Company, Inc., by Lake Wales and approval of the Lake Wales Agreement (see **Composite Exhibit “D”**) and

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Renewal (see **Exhibit “E”**) with Odyssey Manufacturing Company, Inc., for the purchase and delivery of sodium hypochlorite is substantially the same as would be approved by the Town, and the Town Commission adopts the *bid award* and/or selection of Odyssey Manufacturing Company, Inc., and elects to piggyback the Lake Wales Agreement (see **Composite Exhibit “D”**) and Renewal (see **Exhibit “E”**); and

WHEREAS, the Town Commission finds that this *Resolution No. 24-33* is authorized pursuant to its home rule authority as secured by Article VII, §2(b) of the Florida Constitution, Section 166.021 of the Florida Statutes, the general law of state preemption as announced in Florida League of Cities, Inc. v. Department of Ins. and Treasurer, 540 So. 2d 850 (Fla. 1st DCA 1989), and the general law on the “piggybacking” of other governmental entities’ performance and procurement prerequisites as found in Accela, Inc. v. Sarasota County, 993 So. 2d 1035 (Fla. 2d DCA 2008); and

WHEREAS, on November 12, 2024, at a duly noticed public meeting, the Town Commission finds that there is a bona fide public need for the timely procurement of *Ultrachlor 12.5 Trade Percent Sodium Hypochlorite* necessitating its adoption of the Lake Wales *competitive sealed bid process(es)* and *bid award* to Odyssey Manufacturing Company, Inc.; and

WHEREAS, the Town Commission desires to piggyback the Lake Wales Agreement (see **Composite Exhibit “D”**) and Renewal (see **Exhibit “E”**); and, in light of jurisdictional differences and current applicable Florida law, the Town and Odyssey Manufacturing Company, Inc., are amenable to entering into a *First Amendment to the Agreement For Purchase of Sodium Hypochlorite* (hereafter the “Amendment”);

WHEREAS, a copy of the Amendment is attached hereto as **Exhibit “F”** and by reference made a part of this *Resolution No. 24-33*; and

WHEREAS, it is the intent of the Town Commission that this *Resolution No. 24-33* should be construed deferentially in favor of the Town’s home rule powers and that the Town Commission’s decision to adopt the processes and piggyback the Lake Wales Agreement, as more specifically set forth in this *Resolution No. 24-33*, are legislative in nature; and

WHEREAS, it is in the best interests of the citizens and residents of the Town of Dundee, Florida, and in furtherance of the health, safety and welfare of the citizens and residents of the Town to adopt the City of Lake Wales *competitive sealed bid process(es)* and *bid award* to Odyssey Manufacturing Company, Inc. (see **Exhibits “A – E”**) and, in light of jurisdictional differences and current applicable Florida law, negotiate and enter into the Amendment (see **Exhibit “F”**) with Odyssey Manufacturing Company, Inc.; and

WHEREAS, the Town Commission of the Town of Dundee, Florida, finds that the approval and adoption of this **Resolution No. 24-33** is intended to enhance the present advantages that exist within the corporate limits of the Town of Dundee, Florida; is consistent with the public interest; and this **Resolution No. 24-33** is intended to promote, protect, and improve the public health, safety, and general welfare of the citizens and residents of the Town of Dundee, Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA:

Section 1: Incorporation of Factual Recitals.

The above-referenced factual recitals (WHEREAS clauses) and referenced exhibits are incorporated herein as true and correct statements which form a factual and material basis for the adoption of this **Resolution No. 24-33**, and the Town Commission of the Town of Dundee, Florida, hereby adopts the above-referenced factual recitals as the legislative findings supporting the adoption of this **Resolution No. 24-33**.

Section 2: Authority and Adoption.

Pursuant to its home rule authority as secured by Article VII, §2(b) of the Florida Constitution and Section 166.021 of the Florida Statutes, the Town Commission of the Town of Dundee, Florida, hereby adopts the City of Lake Wales *competitive sealed bid process(es)* in and/or for the City of Lake Wales Invitation To Bid No. 23-540 (hereafter the “ITB No. 23-540”) and *bid award* to Odyssey Manufacturing Company, Inc., for which all documents are attached hereto as **Exhibits “A” through “E”** and made a part hereof by reference; and, in light of jurisdictional differences and current applicable Florida law, the Town Commission of the Town of Dundee, Florida, also adopts the Amendment attached hereto as **Exhibit “F”** and made a part hereof by reference.

Section 3: Town Manager Authorization.

The Town Manager, or her designee, is hereby authorized to take any and all necessary further action(s) to effectuate the intent of this **Resolution No. 24-33** which includes, but shall not be limited to, the negotiation, execution, and implementation of the agreement(s) approved herein. Further, the Town Manager or her/his designee, and all appropriate Town Officials are authorized to execute on behalf of the Town of Dundee, Florida, the Amendment with Odyssey Manufacturing Company, Inc., which is attached hereto as **Exhibit “F”** and made a part hereof by reference, and take all other necessary actions related to the referenced Amendment as well as any further agreements which may be necessitated by the matters approved by the Town Commission.

Section 4: Conflicts.

All resolutions in conflict with this **Resolution No. 24-33** are repealed to the extent necessary to give this **Resolution No. 24-33** full force and effect.

Section 5: Severability.

The provisions of this **Resolution No. 24-33** are severable. If any section, subsection, sentence, clause, phrase of this **Resolution No. 24-33**, or the application thereof shall be held invalid, unenforceable, or unconstitutional by any court, administrative agency, or other body with

appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby. The Town Commission of the Town of Dundee hereby declares that it would have passed this **Resolution No. 24-33**, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared invalid, unenforceable, or unconstitutional, or unenforceable. If any word, sentence, clause, phrase, or provision of this **Resolution No. 24-33** for any reason is declared by any court of competent jurisdiction to be invalid, unenforceable, or unconstitutional, then all remaining provisions and portions of this **Resolution No. 24-33** shall remain in full force and effect. If any section, subsection, sentence, clause or phrase of this **Resolution No. 24-33** is, for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this **Resolution No. 24-33**. The Town of Dundee, Florida, by and through its Town Commission, hereby declares that it would have passed this **Resolution No. 24-33**, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 6: Administrative Correction of Scrivener's Errors.

It is the intention of the Town Commission that sections of this **Resolution No. 24-33** may be renumbered or re-lettered and the word "resolution" may be changed to, "section", or such other appropriate word or phrase in order to accomplish such intentions; and sections of this **Resolution No. 24-33** may be re-numbered or re-lettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the Town Manager or designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Town Clerk.

Section 7: Effective Date.

This **Resolution No. 24-33** will take effect immediately upon its passage by the Town Commission of the Town of Dundee, Florida.

READ, PASSED AND ADOPTED at a duly called meeting of the Town Commission of the Town of Dundee, Florida, assembled on the 12th day of November, 2024.

TOWN OF DUNDEE

Samuel Pennant, Mayor

ATTEST WITH SEAL:

Lita O'Neil, Town Clerk

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Approved as to form:

Frederick J. Murphy, Jr., Town Attorney