

**AGREEMENT FOR PURCHASE OF GOODS AND SERVICES  
(Chemicals for the Municipal Electric Plant)**

**THIS AGREEMENT FOR PURCHASE OF GOODS AND SERVICES** (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, between the **CITY OF LAKE WORTH BEACH**, Florida, a municipal corporation (“CITY”) with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **NALCO COMPANY LLC**, a Delaware limited liability company authorized to do business in the State of Florida (“CONTRACTOR”) with its office located at 1601 West Diehl Road, Naperville, IL 60563.

**RECITALS**

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, CONTRACTOR submitted a price proposal to provide necessary chemicals for the municipal electric plant; and

WHEREAS, the CITY desires to accept the CONTRACTOR’s proposal for CONTRACTOR to render the goods and services to the CITY as provided herein; and

WHEREAS, the CONTRACTOR is a sole-source provider of the necessary chemicals and the CITY is authorized under its Procurement Code and Policy to directly contract with the CONTRACTOR; and

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

WHEREAS, the CITY finds entering into this Agreement for the goods and services described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

**1. TERM**

1.1 The term of this Agreement shall be for one (1) year, with the option to renew for four (4) additional one (1) year renewal periods upon the mutual written agreement of both parties and dependent on the annual appropriation of funds by the CITY’s City Commission. The renewal term may be approved by the City Manager. Notwithstanding the foregoing, this Agreement may be earlier terminated as set forth in this Agreement.

## **2. SCOPE OF WORK**

2.1 During the term of this Agreement, City shall purchase from CONTRACTOR and CONTRACTOR shall sell to City the chemical products set forth in the CONTRACTOR's price proposal, which is attached hereto as Exhibit "A". Products are only for City's own use and may not be resold.

2.2 The CONTRACTOR represents to the CITY that the goods and services provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the materials shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the goods and services provided for herein in a professional and competent manner.

2.4 The goods and services to be provided under this Agreement shall be provided by the CONTRACTOR or under its supervision and all personnel engaged in performing said services shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such services. All of the CONTRACTOR's personnel (and all subcontractors), while on CITY premises, shall comply with all CITY requirements governing safety, conduct and security.

## **3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS**

3.1 The CONTRACTOR is and shall be, in the performance of this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the services.

3.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the services hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONTRACTOR.

## **4. MATERIALS**

4.1 The CONTRACTOR shall provide all materials as more specifically set forth in this Agreement or its exhibit.

## **5. FEE AND ORDERING MECHANISM**

5.1 For goods and services to be rendered under this Agreement, the CONTRACTOR shall be entitled to a fee for actual goods and services provided and accepted by the CITY, at the price as set forth in Exhibit "A" subject to adjustment as set forth in Exhibit "A".

5.2 Should the CITY require additional materials or services, not included in this Agreement, fees and payment for such work will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code prior to any such additional materials or services being provided by the CONTRACTOR.

5.3 The CITY's ordering mechanism for the goods and services (including each order of chemicals) under this Agreement will be by a CITY issued Purchase Order(s); however, the terms and conditions stated in a CITY Purchase Order(s) shall not apply. CONTRACTOR shall not provide goods or services under this Agreement without a City Purchase Order specifically for the stated goods or services. CONTRACTOR shall provide the amount of requested goods/services and price listed in each Purchase Order (consistent with the prices in Exhibit A) and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess goods or costs not specifically stated in the Purchase Order(s). the CITY's Fiscal Year ends on September 30<sup>th</sup> of each calendar year. The CITY cannot authorize the purchase of goods or services beyond September 30<sup>th</sup> of each calendar year, prior to the annual budget being approved by the CITY Commission. Additionally, the CITY must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the CITY will issue a new Purchase Order(s) each Fiscal Year for required and approved goods.

## **6. MAXIMUM COSTS**

6.1 The CONTRACTOR expressly acknowledges and agrees that the total not to exceed cost to complete the requested goods and services under this Agreement is **Fifty Thousand Dollars (\$50,000.00) per fiscal year**, and no additional costs shall be authorized without prior written approval from the CITY.

## **7. INVOICE**

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for approval prior to receiving compensation. The CONTRACTOR shall be paid within thirty (30) days of receipt of an approved invoice for work.

7.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONTRACTOR until the dispute is resolved.

## **8. AUDIT BY CITY**

8.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or

documents related to the CONTRACTOR's performance under this Agreement related to services provided on a cost-plus basis or invoices seeking expense reimbursement, including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

## **9. COPIES OF DATA/DOCUMENTS**

9.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

## **10. OWNERSHIP**

10.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR exclusively for the City pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

## **11. WRITTEN AUTHORIZATION REQUIRED**

11.1 The CONTRACTOR shall not make changes in the goods or services approved by a CITY purchase order or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

## **12. DEFAULTS, TERMINATION OF AGREEMENT**

12.1 If the CONTRACTOR fails to timely perform the requested goods and services or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the CITY Manager may give written notice to the CONTRACTOR specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within 30 days or commence good faith steps to remedy the default to the reasonable satisfaction of the CITY Manager, the CITY may take such action to remedy the default and the reasonable expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Further, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

12.2 Notwithstanding paragraph 12.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause upon 30 days advance written notice to Nalco. At such time, the CONTRACTOR would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-

mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

12.3 CONTRACTOR may terminate this Agreement in the event of a material default by CITY that is not cured within 30 days of a notice to CITY from CONTRACTOR of such material default.

### **13. INSURANCE**

13.1. Prior to commencing the Scope of Work, the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change reducing the insurance coverage or quality below the requirements or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract. All insurance, other than Workers' Compensation, required hereunder shall specifically include the "CITY of Lake Worth" as an "Additional Insured" to the extent of the liabilities assumed by CONTRACTOR in this Agreement, and the CONTRACTOR shall provide additional insured endorsements section of Certificates of Insurance.

13.2. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

13.3. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

13.4. The CONTRACTOR shall maintain, during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

### **14. WAIVER OF BREACH**

14.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

### **15. INDEMNITY**

15.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or tangible property damage, costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the negligence or willful misconduct of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

15.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

15.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

15.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or CONTRACTOR. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time.

15.5 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

## **16. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

16.1 This Agreement consists of the terms and conditions provided herein and the CONTRACTOR's price proposal (**Exhibit "A"**) and the **Contractor's equipment lease terms (Exhibit "B")**. To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the **Exhibit "A"** next taking precedence. Exhibit "B" shall apply solely to equipment leased by the CITY from the CONTRACTOR (if any). Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

16.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

## **17. ASSIGNMENT**

17.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the

benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

17.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

## **18. SUCCESSORS AND ASSIGNS**

18.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

## **19. WAIVER OF TRIAL BY JURY**

19.1 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

## **20. GOVERNING LAW AND REMEDIES**

20.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

20.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

## **21. TIME IS OF THE ESSENCE**

21.1 Time is of the essence in the completion of the Scope of Work as specified herein.

## **22. NOTICES**

22.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3<sup>rd</sup>) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

City of Lake Worth Beach  
Attn: Carmen Y. Davis, City Manager  
7 North Dixie Highway  
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

NALCO COMPANY, LLC  
1601 West Diehl Road,  
Naperville, IL 60563  
Attn: Industrial Sector General Counsel

### **23. SEVERABILITY**

23.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

### **24. DELAYS AND FORCES OF NATURE**

24.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR'S request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence the time of completion shall be extended for any reasonable time that the CITY, may decide; subject to the CITY'S rights to terminate pursuant to Section 12.2. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR'S sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.



24.2 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

## **25. COUNTERPARTS**

25.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. This Agreement may be executed electronically.

## **26. LIMITATIONS OF LIABILITY**

26.1 Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

26.2 Regardless of anything herein to the contrary, CONTRACTOR'S liability under this Agreement and any related Purchase Orders including without limitation for any breach of contract, warranty, indemnity, liquidated damages, negligence or tort claims or otherwise shall not exceed \$200,000.00 over the term of the Agreement. The limitation of liability in this Section 26.2 does not apply to third party claims for personal injury, death or tangible property damage to the extent caused by CONTRACTOR'S negligence or willful misconduct.

## **27. PUBLIC ENTITY CRIMES**

27.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

## **28. PREPARATION**

28.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

## **29. PALM BEACH COUNTY INSPECTOR GENERAL**

29.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

### **30. ENFORCEMENT COSTS**

30.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

### **31. PUBLIC RECORDS**

CONTRACTOR shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONTRACTOR specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) 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 this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the services. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: CITY CLERK, AT (561) 586-1660 [CITY CLERK@LAKEWORTHBEACHFL.GOV](mailto:CITYCLERK@LAKEWORTHBEACHFL.GOV), 7 NORTH DIXIE HIGHWAY, LAKE WORTH, FLORIDA 33460.**

## **32. COPYRIGHTS AND/OR PATENT RIGHTS**

32.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement if the goods are used in accordance with CONTRACTOR's instructions and the CONTRACTOR agrees to hold the CITY harmless from any and all liability, loss, or expense occasioned by any such violation.

## **33. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH**

33.1 CONTRACTOR certifies that all material, equipment, etc., contained in this bid meets all OSHA requirements. CONTRACTOR further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

## **34. FEDERAL AND STATE TAX**

34.1 The CITY of Lake Worth Beach is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will sign an exemption certificate submitted by the successful Proposer. Vendors or contractors doing business with the CITY of Lake Worth Beach shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall any Vendor/Contractor be authorized to use the CITY's tax Exemption Number in securing such materials.

## **35. PROTECTION OF PROPERTY**

35.1 The CONTRACTOR shall at all times guard against damage or loss to the tangible property of the CITY or of other vendors or contractors and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

## **36. DAMAGE TO PERSONS OR PROPERTY**

36.1 The responsibility for all damage to person or property arising out of or on account of work done under this Contract shall rest upon the CONTRACTOR, and he/she shall save the CITY and political unit thereof harmless from all claims made on account of such damages.

## **37. SAFETY: ACCIDENT PREVENTION.**

37.1 In the performance of this Agreement, the CONTRACTOR shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the CITY, may determine to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

37.2 It is a condition of this Agreement, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Agreement (if authorized), that the CONTRACTOR and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

37.3 Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

**38. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT** (Applicable to all federally funded contracts and any subcontracts of \$100,000 or more).

38.1 By execution of this Agreement, CONTRACTOR, if applicable, will be deemed to have stipulated as follows:

- (a) Any CITY facility or property that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604 ), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- (b) CONTRACTOR agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- (c) CONTRACTOR shall promptly notify the CITY of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a CITY facility or property that is or will be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities.

**39. SCRUTINIZED COMPANIES**

39.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

39.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List,

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

39.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

39.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

39.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

39.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

**40. E-VERIFY.** Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONTRACTOR shall:

- a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
- b. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- c. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- e. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- f. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

**41. Warranty.** CONTRACTOR warrants and guarantees to the CITY that the goods and services provided under this Agreement shall be in accordance with the Agreement and all exhibits made a part of this Agreement. CONTRACTOR warrants that all goods and services shall be free from defects at delivery. CONTRACTOR guarantees that all services and labor performed under this Agreement will be free from defects for one (1) year from performance. CONTRACTOR shall provide to the CITY any and all manufacturers' warranties for the goods and services being provided under this Agreement. These warranties do not apply to (i) damage

resulting from misuse, neglect, accident or improper use of any of the goods by any person or entity other than CONTRACTOR or (ii) any good or service altered by any person or entity other than CONTRACTOR. CONTRACTOR goods and services do not cover, and CONTRACTOR makes no warranties with respect to water system biohazards from waterborne pathogens, including but not limited to *Legionella* bacteria. **ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.**

**42. SURVIVABILITY**

42.1 Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

43. **CONTRACTOR-OWNED EQUIPMENT TERMS AND DIGITAL PROGRAM TERMS.** The additional terms and conditions applicable to CONTRACTOR-owned equipment provided to CITY on a rental or usage basis and the additional terms applicable to CONTRACTOR's digital programs are set forth in Exhibit B.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**  
**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Goods and Services (Chemicals for the Municipal Electric Plant) on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: \_\_\_\_\_  
Betty Resch, Mayor

By: \_\_\_\_\_  
Melissa Ann Coyne, CITY Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, CITY Attorney

By: \_\_\_\_\_  
Bruce T. Miller, Financial Services Director

CONTRACTOR: NALCO COMPANY, LLC

By: Jonathan Foultz

[Corporate Seal]

Print Name: Jonathan Foultz

Title: District Manager

STATE OF Florida )  
COUNTY OF Orange )

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on this 5th day of December 2022, by Jonathan Robert Foultz, as the District Manager [title] of **Nalco Company, LLC** a Delaware limited liability company, who is personally known to me or who has produced Florida Driver License as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Veronica L. Salinas  
Notary Public Signature  
Notary Seal:



## Exhibit "A"

### Contractor's Price Proposal



Bassem Wissa  
District Representative  
Heavy Industry

E [Bassem.wissa@ecolab.com](mailto:Bassem.wissa@ecolab.com)  
M 321-240-5546

Date: 9-19-2022

City of Lake Worth

Attention: Evanna Stephenson

Subject: 2022-2023 Services and Chemicals Quote

We are pleased to present you our 2022-2023 services and chemicals quote which covers the water treatment requirements for City of Lake Worth Power Plant.

#### Chemical pricing

Material	Price \$/lb
22305.15	\$ 3.83
352.15	\$ 6.17
39M.12	\$ 5.66
3DT230.15	\$ 5.08
73550.15	\$ 5.78
7408.12	\$ 3.92
7408.15	\$ 2.71
BT-3811.15	\$ 4.19
ELIMINOX.15	\$ 5.29
PC-11.15	\$ 6.25
PC-391T.11	\$ 8.16
ST70.15	\$ 3.98

#### Chemicals estimation for 2022-2023:

Chemical	Quantity lbs	2022-2023 \$ Price/lb	Annual
ST70.15	1794	\$ 3.98	\$ 7,140.12
39M.12	258	\$ 5.66	\$ 1,460.28
22305.15	487	\$ 3.83	\$ 1,865.21
3DT230.15	1017	\$ 5.08	\$ 5,166.36
7408.12	172	\$ 3.92	\$ 674.24
PC-391T.11	44	\$ 8.16	\$ 359.04
PC-11.15	487	\$ 6.25	\$ 3,043.75
ELIMINOX.15	487	\$ 5.29	\$ 2,576.23
352.15	487	\$ 6.17	\$ 3,004.79
Total			\$ 25,290.02



**3D TRASAR Lease – Monthly**

Item	Price \$/month	Price \$/annual
Nextgen 3D TRASAR for CW	495	5940

**Legionella testing – Quarterly**

Item	Price \$/quarter	Price \$/annual
Legionella testing for S3 and S5 CT	600	2400

We appreciate your business and will continue to be an exceptional business partner by delivering unparalleled value to drive extraordinary outcomes for your operations.

Sincerely,

Bassem Wissa  
District Representative

Nalco Water

Email: [bassem.wissa@ecolab.com](mailto:bassem.wissa@ecolab.com)  
M: 321-240-5546

### Hardship

CONTRACTOR may increase the prices for the Products or Services if, at any time during the term of this Agreement, an Extraordinary Inflationary Disruption occurs. Extraordinary Inflationary Disruption is defined as an increase in delivered costs beyond the control of CONTRACTOR of at least seven (7%) percent and sustained over a three month period. In case of such an Extraordinary Inflationary Disruption, CONTRACTOR may increase the price of the Products up to the full amount of the percent increase in its costs (raw materials, freight, labor or energy) by giving CITY at least thirty (30) days written notice. The baseline for determining such increase shall be on an individual product basis. If CONTRACTOR's costs decline back to a baseline level, CONTRACTOR is allowed to maintain product prices at the elevated level for the same period of time as the Extraordinary Inflationary Disruption.

With the CONTRACTOR's notice of an Extraordinary Inflationary Disruption, the CONTRACTOR will provide the Owner the following hardship detail:

- Product(s)/package(s) affected
- %Cost Change
- Raw material or material family causing cost change
- Proof of sustained cost increase.

Customer is also subject to CONTRACTOR'S monthly Energy Surcharge, which CONTRACTOR implemented April 1, energy surcharge will be calculated based on the price of Brent Oil per Barrel as shown below:

Brent Oil / Barrel:	\$75-\$100	\$100-\$125	\$125-\$150
Surcharge:	+8%	+10%	+12%

**Exhibit “B”**  
**CONTRACTOR-Owned Equipment and Digital Program Terms**

CONTRACTOR-Owned Equipment Terms

For equipment (including Porta-Feed units, 3D TRASAR, OMNI, Purate, and Pareto equipment and other proprietary equipment of CONTRACTOR and any associated computer hardware or software) furnished to CITY on a rental or use basis (the “Equipment”), the following terms and conditions shall also apply.

1. Equipment shall remain the sole personal property of CONTRACTOR even though CITY may attach Equipment to realty. CONTRACTOR may cause such Equipment to be marked to indicate its ownership. CITY shall take no action which is inconsistent with CONTRACTOR’s title to the Equipment, and shall not move, encumber or alter the Equipment without CONTRACTOR’s written authorization.
2. CITY shall not use the Equipment with any materials or products other than those recommended or approved by CONTRACTOR. The proper functioning of the Equipment is conditioned upon CITY operating it in accordance with CONTRACTOR’s recommendations.
3. CITY shall install and provide the utilities necessary for the Equipment, and will provide a suitable location for the Equipment, including but not limited to shelter, tank pads, spill protection, foundations, etc., as appropriate. CITY shall receive, unload, place and remove Equipment at no cost to CONTRACTOR and should be responsible for procuring any necessary permits or licenses for such actions. With respect to Porta-Feed units, CITY agrees to provide access for a standard truck (min. 40 feet end-to-end, 14 feet high) to be driven safely to an area (e.g. loading dock) in the vicinity of the base tank to offload refill units.
4. CITY shall not alter the Equipment without CONTRACTOR’s written authorization. CITY assumes all risk of loss or liability arising from or pertaining to its operation or use of the Equipment, and shall be responsible for all direct and reasonable losses, claims, damages and expenses arising from CITY’s use of the Equipment except to the extent damage to the Equipment is caused by CONTRACTOR
5. CITY shall allow CONTRACTOR to subcontract portions of work to be performed under this Agreement with respect to Equipment including but not limited to data-hosting, transmission of data through internet service providers and use other service providers. CONTRACTOR shall have the right to inspect and service Equipment during normal business hours.
6. Upon termination of this Agreement by either CONTRACTOR or CITY, CITY shall return Equipment to CONTRACTOR at CITY’s sole expense in the same condition as received, ordinary wear and tear excepted. In the event Equipment is lost, damaged or destroyed due to the CITY’s use, CITY shall pay to CONTRACTOR the cost of replacement, or of repair at CONTRACTOR’s standard charges then in effect. During the term of this Agreement, the Equipment will remain the exclusive property of CONTRACTOR.
7. CITY shall promptly notify CONTRACTOR of any material change in CITY’s status, including, but not limited to, change of address, desired Equipment location, close of business.
8. CONTRACTOR reserves the right to use non-union labor for supervised, installation, testing and service of Equipment.
9. CITY agrees to inform CONTRACTOR of any special or unusual safety precautions that should be taken because of conditions in CITY’s plant or process.
10. Notwithstanding anything in any agreement or otherwise to the contrary, all data generated or collected by the Equipment that is transmitted to CONTRACTOR (or to a third-party hosting services provider of CONTRACTOR) is owned by CITY but CITY hereby grants to CONTRACTOR a perpetual, non-exclusive, royalty-free license to use that data (and that license will survive the termination or expiration of this Agreement). Each party will retain responsibility and liability relating to security measures and authorized or unauthorized access

to its computer/IT systems that it owns or controls. This paragraph does not relieve either party from responsibility or liability to the extent of its fraud or willful misconduct.

#### Digital Program Terms

A "Digital Program" or "Program" is a hosted interface providing dashboards with water and treatment and process chemistry related information and insights (including Ecolab 3D) for which CITY has subscribed in Exhibit "A" or another ordering document. CITY grants to CONTRACTOR, and its affiliates, a license to use data provided or made available by CITY to CONTRACTOR in connection with the Program ("CITY Data") as necessary to provide the Program to CITY, to incorporate CITY Data into aggregated and anonymized data sets and for the purpose of improving CONTRACTOR's and its affiliates goods and services and for creating for its own account any general information or insights that may be derived from CITY Data for any lawful purpose, which license will survive the Program (the "Purpose"). CONTRACTOR is permitted to utilize subcontractors or other vendors in the performance of the Program with CITY Data provided that such subcontractor or vendor has agreed to use the CITY Data only for the Purpose and to treat CITY Data as confidential information. Each party will retain responsibility and liability relating to security measures and authorized or unauthorized access to its computer/IT systems that it owns or controls. This paragraph does not relieve either party from responsibility or liability to the extent of its fraud or willful misconduct. CITY will ensure the security of the passwords and usernames used by CITY personnel to use the Program and is solely responsible for access control maintenance (including access termination) in connection with its use of the Program. The Program is warranted to perform as set forth in the program description and is otherwise provided "as-is" and without warranty that it will be uninterrupted or error free. In no event shall either party have any liability for indirect or consequential damages related to the Program. The CONTRACTOR-Owned Equipment Terms above apply to the rental or use of CONTRACTOR-owned products or other equipment or items ("Equipment") that are provided in connection with Program.

CITY shall, in its use of the Program, collect, access, use, store, disclose, dispose of, transfer, transmit to Nalco (or its designee) CITY Data in accordance with the requirements of all applicable laws including, without limitation, applicable data protection laws and regulations. CITY represents that Customer Data will not include any protected health information, or any other information of the type enumerated in Article 9 of the General Data Protection Regulation, Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 or the analogous laws of any other jurisdiction (such data, "Personal Data"). The Data Processing Agreement Annex located here: [Data Processing Agreement](#) (as such Annex may be updated from time to time), applies to the extent Nalco receives from CITY, or otherwise Processes for or on behalf of Customer, any Personal Data in connection with the Agreement.