

## MATERIALS AND SERVICES CONTRACT

**BETWEEN:** City of St. Helens, a municipal corporation of the State of Oregon (“City”)

**AND:** Hasa, Inc. (“Contractor”)

**DATED:** \_\_\_\_\_

### RECITALS

**A.** The City is in need of bulk 12.5% Sodium Hypochlorite solution for the Wastewater Treatment Plant, and Contractor is qualified and prepared to provide materials and services to fill that need.

**B.** The purpose of this Contract is to establish the materials and services to be provided by Contractor and the compensation and terms for such materials and services.

**NOW, THEREFORE,** the parties mutually agree as follows:

**1. Engagement.** The City hereby engages Contractor to furnish the materials (“Materials”) and services (“Services”) specified in Attachment A, Scope of Work, attached hereto and incorporated herein by reference, and Contractor accepts such engagement. The principal contact on behalf of Contractor shall be Amy Vermillion, phone 909-297-9183.

**2. Scope of Work.** The duties and responsibilities of Contractor, including a schedule of performance, shall be as described in Attachment A. Any changes to this Contract shall be in writing, signed by both parties, and shall be attached to and become a part of this Contract. The scope of work may include supplying “goods,” as defined in ORS 72.1050. References to “Work” herein refer to the provisions of both Materials (or goods) and Services.

### **3. Contract Documents.**

**3.1** The term “Contract” means this Material and Services Contract, the Scope of Work, the Insurance Requirements, and any specifications, quotation, extensions, amendments, exhibits, and other documents attached or incorporated by reference. Contract also includes any amendments or addenda issued by the City with the Request for Quotations.

**3.2** This Contract shall constitute the entire agreement between the parties concerning the Materials and Services

**3.3** Each party shall notify the other party of inconsistencies in the Contract. If inconsistencies occur, the document or provision that will result in a better quality of Good or Services shall have priority. Amendments shall have priority over all other Contract documents, including amendments of an earlier date. Specifications have priority over this form. This form and specifications have priority over the quotation. The City may issue a written interpretation to resolve any inconsistencies in the Contract Documents, which shall be binding on Contractor so long as such interpretation is reasonable.

**3.4** If any term or provision of this Contract is held by a court of competent jurisdiction to be invalid, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**3.5** After this Contract is signed, the Contract may be changed only by written amendments signed by authorized representatives of both parties.

#### **4. Specifications.**

**4.1** Non-Compliance. If any Materials or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to comply with applicable regulatory standards or the Contract specifications, Contractor shall immediately notify City of the recall or non-compliance, and shall provide copies of the recall notice or notice of non-compliance, as applicable, and all other supporting documentation for the recall or non-compliance determination. City may elect to (a) reject Materials in whole or in part, or (b) revoke its acceptance of Materials in whole or in part. If City rejects Materials or revokes its acceptance of Materials, Contractor shall remove the Materials from City's possession at no cost to City and shall reimburse City for all payments made for those Materials.

**4.2** Standard Components. Unless specified otherwise in the Contract specifications, Contractor shall provide Materials with all components and accessories that the manufacturer lists as "standard" for the Materials.

**4.3** Necessary Components. Unless specified otherwise in the Contract specifications, Contractor shall include all components, hardware and parts necessary for complete and proper assembly, installation and operation of Materials.

**4.4** New and Unused Materials. Unless specified otherwise in the Contract specifications, Contractor shall deliver Materials that are new, unused and produced from current production inventory. Contractor shall provide Materials manufactured from only those components that the manufacturer offers in the manufacturer's current parts catalogue for Materials.

**4.5** Detailed Specifications. The Materials shall meet all requirements imposed upon such Materials by the plans, specifications and other technical information included as Attachment A, which is hereby incorporated as if set forth herein.

#### **5. Acceptance, Rejection and Revocation of Acceptance.**

**5.1** Acceptance. City shall test if City, in its sole discretion, deems testing necessary, inspect and either accept or reject Goods delivered within fourteen (14) calendar days from the date Contractor delivers Goods to City. If City does not provide written notice of acceptance or rejection of Goods to Contractor within fourteen (14) calendar days following the date of delivery of Goods, City is deemed to have accepted Goods.

**5.2** Rejection. If City rejects Goods, then City's written notice of rejection shall, at a minimum, itemize the apparent defects and include:

**5.2.1** A description of the nonconformance between Goods delivered and the required Specifications and warranties (including any variance from demonstrations or sample characteristics of Goods if Contractor provided demonstrations or samples);

**5.2.2** A description of any other nonconformance of Goods (including late delivery); and

**5.2.3** A statement indicating whether Contractor may cure the nonconformance and if so, the method by which and time period within which Contractor may cure.

**5.3** Revocation of Acceptance. Notwithstanding City's acceptance of Goods under Section 5.1, City may revoke its acceptance of Goods for nonconformance with the Specifications. If City revokes acceptance of Goods, City shall deliver a written notice of revocation of acceptance to Contractor that includes the same information required for a written notice of rejection under Section 5.2.

## **6. Contract Term.**

**6.1** The initial term of this Contract begins on April 1, 2022, and ends on March 31, 2023 ("Contract Term"). The parties may agree to extend the Contract Term for two (2) successive periods of twelve (12) months each. Such extension shall begin on the day following the end of the initial term or the first extension. Extensions must be set forth in writing and signed by authorized representatives of both parties. The party requesting the extension must deliver a request for extension at least sixty (60) days before the Contract Term is scheduled to end.

**6.2** A schedule of performance may be included Attachment A – Scope of Work.

**6.3** Notwithstanding Subsection 4.1, this Contract may be terminated before the end of the Contract Term, as provided in the Contract.

**7. Approvals.** If the Contract requires approval of any thing, act, or document, the request for approval and the response must be given by persons with proper authority under the Contract in the same manner as notices under Section 8. Approval will not be withheld unreasonably.

## **8. Notices.**

**8.1** Notices required by this Contract must be given in writing by personal delivery or by United States mail, first-class postage-prepaid, unless some other means or method of notice is required by law. Personally delivered notices shall be deemed delivered immediately upon delivery. Mailed notices shall be deemed delivered 3 days after deposit in the mail.

**8.2** All notices to the City must be directed to the City Administrator. The City's address for notices is:

City of St. Helens  
Attn: City Administrator  
265 Strand Street  
St. Helens OR 97051

**8.3** Contractor's address for notices is:

Hasa, Inc.  
Attn: Amy Vermillion  
3401 Industrial Way  
Longview, WA 98632  
360-578-9300  
[hasabids@hasapool.com](mailto:hasabids@hasapool.com)

**8.4** Each party shall notify the other of any change of address for notices.

**9. Contractor's Responsibility for the Materials and Services.**

**9.1** Time is of the essence on this Contract. Contractor shall perform the Work promptly and efficiently and in accordance with the provisions set forth in Attachment A. Contractor shall provide all labor, materials, tools, equipment, and incidentals that are necessary for proper performance of the Work, including items that may be inferred from the Contract specifications or from prevailing custom or trade usage as being necessary to produce the intended results.

**9.2** Unless the Contract specifications require certain means or methods, Contractor shall be responsible for the means and methods used for the Services.

**9.3** Contractor warrants that all Services will be performed in accordance with the Contract, in accordance with generally accepted practices and standards, as well as in accordance with the requirements of applicable federal, state, and local laws.

**9.4** Materials provided by Contractor are warranted to be new, unused, current production models and free from defects in materials, design and manufacture Contractor further represents and warrants that all Materials meet or exceed all Contract specifications and will be subject to the warranties provided by ORS 72.3120, ORS 72.3130, ORS 72.3140 and ORS 72.3150.

**9.5** Manufacturers' Warranties. At no charge to City, Contractor shall transfer or cause the transfer of all manufacturers' warranties for Materials and component parts, if any, to the City for City's benefit when Contractor delivers Materials to City. If a conflict or inconsistency exists between a manufacturer's warranty and Contractor's warranty, the warranty that provides the greatest benefit and protection to City shall prevail.

**9.6** All Materials delivered shall comply with all applicable federal health and safety standards.

**9.7** Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge

with care and diligence and perform Services in a timely, professional, and workmanlike manner in accordance with standards applicable to Contractor's industry, trade, or profession.

**9.8** Contractor shall provide and properly supervise qualified workers. Contractor and its workers must have any licenses and certificates required by applicable laws.

**9.9** Contractor shall not assign any interest in this Contract or enter into subcontracts for the Services without the prior written approval of the City.

## **10. Use of Premises.**

**10.1** Provisions of this Contract that refer to "the Premises" will apply to the Services only if it is performed at the Premises, defined as real property, including buildings or other improvements that are owned or occupied by the City.

**10.2** Contractor shall confine the Services performed at the Premises to areas and times stated in Attachment A, and Contractor shall avoid any unnecessary interference with the use of the Premises.

**10.3** Contractor shall take reasonable precautions to prevent injury to persons and damage to property that may result from Contractor's use of the Premises. Contractor shall remedy any damage to the Premises and other property of the City resulting from the Services.

**11. Hazardous Chemicals.** Contractor shall implement and bear the cost of precautions required for protection from "hazardous chemicals," as defined in ORS 654.750 or OAR Chapter 437, that may be encountered at the Premises or used for the Services. The City and Contractor shall exchange material safety data sheets, label information, and instructions for precautionary measures for hazardous chemicals kept at the Premises by the City or used for the Services by Contractor. The City may prohibit use of particular hazardous chemicals in its sole discretion.

**12. Liability of City's Officers, Employees and Agents.** Officers, employees, and agents of the City shall not have any direct, personal liability to Contractor.

**13. No Agency.** Contractor is engaged by the City as an independent contractor in accordance with ORS 670.600. Contractor, subcontractors, and their principals, employees and agents are not agents of the City as that term is used in ORS 30.265.

## **14. Indemnification.**

**14.1** The Contractor shall hold harmless, indemnify, and defend City, its officers, agents, and employees from any and all liability, actions, claims, losses, damages or other costs of whatsoever nature, including attorney's fees and expert witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during or in connection with the performance of the Services or the provision of Materials, actions or failure to perform actions, and other activities of Contractor or its officers, employees, subcontractors or agents, under this Contract, including the negligent professional acts, errors, or omissions of Contractor or its officers, employees, subcontractors, or agents. Such indemnification shall also cover claims brought against City under state or federal workers compensation laws. This indemnity provision excludes liability arising out of the sole negligence of the City and its employees.

**14.2** The Contractor shall assume all responsibility for the Materials and Services and shall bear all losses and damages directly or indirectly resulting to the Contractor, to the City, to the Design Professional, and to their officers, agents, and employees on account of (a) the character or performance of the Materials and Services, (b) unforeseen difficulties, (c) accidents, or (d) any other cause whatsoever. The Contractor shall assume this responsibility even if (a) fault is the basis of the claim, and (b) any act, omission or conduct of the City connected with the Contract is a condition or contributory cause of the claim, loss, damage or injury.

**14.3** Contractor waives any and all statutory or common law rights of defense and indemnification by the City.

**14.4** Contractor shall also defend and indemnify City from all loss or damage that may result from Contractor's wrongful or unauthorized use of any patented article or process.

**14.5** If any aspect of the above indemnities shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall be stricken to the extent illegal or invalid, with the remaining terms continuing to be valid, and such shall not affect the validity of the remainder of this indemnification.

**14.6** Any specific duty or liability imposed or assumed by the Contractor as may be otherwise set forth in the Contract shall not be construed as a limitation or restriction of the general liability or duty imposed upon the Contractor by this section.

**14.7** In the event any such action or claim is brought against the City, the Contractor shall, if the City so elects and upon tender by the City, defend the same at the Contractor's sole cost and expense, promptly satisfy any judgment adverse to the City or to the City and the Contractor jointly, and reimburse the City for any loss, cost, damage, or expense, including attorney and expert fees, suffered or incurred by the City.

**15. Insurance.** The Contractor shall provide and maintain during the life of this Contract the insurance coverage as described in Attachment B. All costs for such insurance shall be borne by the Contractor and shall be included in the Contract price. In case of the breach of any provision of this section, the City may elect to take out and maintain at the expense of the Contractor such insurance as the City may deem proper. The City may deduct the cost of such insurance from any monies that may be due or become due the Contractor under this Contract. Failure to maintain insurance as provided is a material breach and cause for default termination of the Contract. Contractor shall furnish City certificates of insurance acceptable to City prior to execution by the City and before Contractor or any subcontractor commences work under this Contract. The certificate shall show the name of the insurance carrier, coverage, type, amount (or limits), policy numbers, effective and expiration dates and a description of operations covered. The certificate will include the deductible or retention level and required endorsements. Insuring companies or entities are subject to City's acceptance. If requested, copies of insurance policies shall be provided to the City. Contractor shall be responsible for all deductibles, self-insured retentions, and/or self-insurance. Approval of the insurance shall not relieve or decrease the liability of the Contractor hereunder.

**16. Governing Laws.** The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and ordinances of the City of St. Helens,

Oregon. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Columbia County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon (Portland).

## **17. Compliance with Law.**

**17.1** Contractor shall comply with all applicable federal, state and local statutes, ordinances, administrative rules, regulations and other legal requirements in performance of this Contract.

**17.2** Contractor shall comply with applicable laws, including ORS 279B.020, ORS 279B.220, ORS 279B.225, ORS 279B.230 and ORS 279B.235, which are incorporated herein.

**17.3** Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as “recycled product” is defined in ORS 279A.010(1)(gg)).

**17.4** Pursuant to ORS 279B.020, no person shall be employed for the Work for more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in cases of necessity, emergency, or when the public policy absolutely requires it. Except for persons who are exempt from overtime pay, persons who perform the Work shall be paid at least time and a half pay for legal holidays specified in a collective bargaining agreement or in ORS 279B.020(1)(b) and for time worked in excess of ten (10) hours a day or in excess of forty (40) hours a week, whichever is greater.

**17.5** If Contractor is a nonresident bidder, as defined in ORS 279A.120(1)(a), and the compensation, as set forth in Attachment C attached hereto and hereby incorporated by reference, exceeds Ten Thousand Dollars (\$10,000), Contractor shall comply with ORS 279A.120(3).

**17.6** Pursuant to ORS 279A.120(2)(a), Contractor shall use products that have been manufactured in Oregon, provided that price, fitness, availability and quality are otherwise equal.

**17.7** Contractor shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of the City in connection with this Contract in violation of ORS Chapter 244.

**17.8** Contractor is a “subject employer,” as defined in ORS 656.005, and shall comply with ORS 656.017. Contractor shall provide workers’ compensation coverage for “subject workers,” as defined in ORS 656.005(28), employed to perform the Work. Before performing any Work, Contractor shall provide a certificate of insurance for workers’ compensation coverage or other proof of coverage, or certify that no subject workers will perform Work.

**17.9** Contractor certifies that it currently has a City business license or will obtain one prior to delivering Materials or Services under this Agreement.

**18. Nondiscrimination.**

**18.1** Contractor shall comply with all applicable federal, state, and local laws, rules and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions or disability.

**18.2** Contractor shall comply with provisions of City's Equal Opportunity Policy and comply with ORS Chapter 659 and ORS Chapter 659A relating to unlawful employment practices and discrimination by employers against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262 or to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

**18.3** Contractor shall comply with the Americans with Disabilities Act of 1990 (Pub. Law No. 101-336), ORS 30.670 through ORS 30.685, ORS 659A.425, and all regulations and administrative rules established pursuant to those laws, in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training, educational or otherwise, conducted by Contractor.

**19. Compensation.** The terms of compensation shall be as provided in Attachment C. The compensation stated in Attachment C constitutes the total compensation payable to Contractor for the Materials and Services.

**20. Payment.**

**20.1** Unless otherwise provided in Attachment C, Contractor shall be paid on a time and materials basis.

**20.2** Contractor shall make and keep reasonable records of Work performed pursuant to this Contract and, unless provided otherwise in Attachment C, shall provide detailed monthly billings to the City. Following approval by the City Administrator, billings shall be paid in full within thirty (30) days of receipt thereof. The City shall notify Contractor of any disputed amount within fifteen (15) days from the date of the invoice, give reasons for the objection, and promptly pay the undisputed amount. Disputed amounts may be withheld without penalty or interest pending resolution of the dispute. Payment to Contractor shall be complete once the City pays compensation as provided in Section 17.

**20.3** The City may suspend or withhold payments if Contractor fails to comply with the requirements of this Contract.

**20.4** The City's obligation to make payments is conditioned upon appropriation of funds pursuant to ORS 294.305 through 294.565. The City certifies that funds for this Contract are included in the City's budget for the current fiscal year, which ends on June 30 next following the date that this Contract is signed. If funds are not appropriated for this Contract for any subsequent fiscal year during the Contract Term, the City shall notify Contractor and this Contract shall be terminated on June 30 of the last fiscal year for which funds are appropriated.

**20.5** Any provision of this Contract that is held by a court to create an obligation that violates the debt limitation of Article XI, Section 9 of the Oregon Constitution shall be void.

**21. Waiver.** Compliance with the provisions of this Contract may be waived only by a written waiver signed by the party waiving its rights. Waiver of compliance with one provision shall not be deemed to waive compliance with any other provision.

**22. Default.** Contractor is in default under this Contract if:

**22.1** Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

**22.2** Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained the required license or certificate within ten (10) calendar days after delivery of City's notice of breach or a longer period as City may specify in its notice; or

**22.3** Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, and Contractor fails to cure its breach within ten (10) calendar days after delivery of City's notice of breach or within a longer period as City may specify in its notice.

### **23. City's Remedies.**

**23.1** If Contractor is in default under Section 20, then, in addition to the remedies afforded elsewhere in this Contract, City shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental, and consequential damages, as provided in ORS Chapter 72. City may, at its option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

**23.1.1** Termination of this Contract for Default;

**23.1.2** After notice of termination for default, the Contractor shall provide the City with immediate and peaceful possession of the Premises, and materials located on and off the Premises for which the Contractor received progress payment.

**23.1.3** Withholding all amounts Contractor has invoiced for Materials and Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;

**23.1.4** The City may proceed to complete the Contract either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the City the amount of the excess procurement costs within 14 days of written demand. To the extent that the procurement costs are lower than the remaining unpaid balance under this Contract, the City shall pay such difference to Contractor.

**23.1.5** Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or

**23.1.6** Exercise of the right of setoff and withholding amounts otherwise due and owing to Contractor in an amount equal to City's setoff right, without penalty.

**23.2** These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If Contractor is later found to not be in breach, the rights and obligations of the parties shall be the same as if this Contract was terminated for convenience.

**24. Contractor's Remedies.** If City terminates this Contract for convenience, or if City is in breach, Contractor's sole remedy is a claim against City for the unpaid price for any Materials delivered and accepted by City less any claims City has against Contractor and is as follows for unpaid Services completed and accepted by City:

**24.1** For Services compensable on an hourly basis, a claim against City for unpaid invoices, hours worked but not yet invoiced, and authorized expenses for Services completed and accepted by City less any claims City has against Contractor.

**24.2** For deliverable-based Services, a claim against City for the amount specified for completing the deliverable multiplied by the percentage of Services completed and accepted by City, less previous amounts paid and the amount of any claims City has against Contractor.

**24.3** If previous amounts paid to Contractor for Goods and Services exceed the amount due to Contractor under this section, Contractor shall pay the excess amount to City immediately upon written demand.

## **25. Dispute Resolution.**

**25.1** For any claim between City and Contractor that arises from or relates to this Contract, if not resolved by mediation, the method of binding dispute resolution shall be as follows: Binding Arbitration.

**25.2** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the contract time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the City and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

**25.3** The City and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Contract and within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work. The City and Contractor waive all Claims and causes of action not commenced within accordance with the period specified by applicable law.

**25.4** Claims by Contractor shall be initiated by notice to City. Claims by Contractor shall be initiated within 21 days after occurrence of the event giving rise to such

Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Failure to give timely notice shall constitute a waiver by Contractor of the claim.

**25.5** Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract.

**25.6** Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to binding dispute resolution.

**25.7** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator and agree upon a schedule for later proceedings.

**25.8** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the City of St. Helens, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in the court having exclusive and sole jurisdiction set forth below.

**25.9** Any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland in accordance with its Procedural Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the City of St. Helens, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**25.10** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**25.11** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**25.12** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be

specifically enforceable under applicable law in the court having exclusive and sole jurisdiction set forth below.

**25.13** Subject to the rules of the Arbitration Service of Portland, either party may consolidate an arbitration conducted under this Contract with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting the arbitrator.

**25.14** Subject to the rules of the Arbitration Service of Portland, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**25.15** The City and Contractor grant to any person or entity made a party to an arbitration conducted under this Section, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the City and Contractor under this Agreement.

**25.16** The parties agree that any actions in Court shall be conducted solely and exclusively within the Circuit Court of Oregon for the Columbia County. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE OREGON CIRCUIT COURT FOR COLUMBIA COUNTY AND WAIVES ANY OBJECTION TO VENUE IN THIS COURT AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM.

**26. Attorney Fees.** If legal action is commenced in connection with this Contract, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred herein at arbitration, trial and on appeal.

**27. Termination for Convenience.**

**27.1** The City may terminate this Contract, in whole or in part, at any time for any reason considered by the City, in the exercise of its sole discretion, to be in the public interest. The City will provide the Contractor ten (10) days prior written notice of a termination for convenience.

**27.2** If this Contract is terminated by the City for convenience, City shall pay the Contractor for Materials delivered and Services properly completed before the termination for convenience, along with costs incurred by Contractor due to the termination. Contractor shall not be entitled to any amount for overhead or profit on undelivered Materials or uncompleted Services. Contractor shall remain liable for Goods delivered and Services performed prior to the termination for convenience.

**27.3** Any termination for default that is found to be improper for any reason shall be converted to a termination for convenience and Contractor's remedies shall be limited as if the termination had been one for convenience at inception.

**28. Action Upon Termination.** Upon receiving notice of termination (whether for default or convenience), Contractor shall cease performance of the Work and terminate subcontracts.

**29. No Third-Party Beneficiaries.** City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**30. Successors in Interest.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns, if any.

**31. Access to Records.** Contractor shall maintain and the City and its authorized representatives shall have access to all books, documents, papers, and records of Contractor which relate to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of ten years after final payment. Contractor shall follow generally accepted accounting principles. Copies of applicable records shall be made available upon request at no charge to City. Failure to keep records for the required period shall be deemed a spoliation of evidence.

**32. Ownership of Work Product.** All work products of the Contractor that result from this Contract, including but not limited to background data, documentation and staff work that is preliminary to final reports, are the property of City. Draft documents and preliminary work submitted to the City for review and comment shall not be considered as owned, used or retained by the City until the final document is submitted. The City shall own all proprietary rights, including but not limited to copyrights, trade secrets, patents and all other intellectual or other property rights in and to such work products. Preexisting trade secrets of the Contractor shall be noted as such and shall not be considered as a work product of this Contract. All such work products shall be considered “works made for hire” under the provisions of the United States Copyright Act and all other equivalent laws. Use of any work product of the Contractor by the City for any purpose other than the use intended by this contract is at the risk of the City. Use of any work product by Contractor for other than this Project is prohibited without the written consent of the City.

**33. Conflict of Interest.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

**CITY:**

**CITY OF ST. HELENS**

Council Meeting Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR:**

**HASA, INC.**

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

City Attorney

**ATTACHMENT A - Scope of Work**

**(Provide Breakdown of Goods and Services)**

**(Provide Schedule)**

**(Attach all relevant plans, specifications, and technical data)**

| <b>Customer Name</b>   | <b>Effective Date</b> | <b>Product</b>                               | <b>Package</b>   | <b>Price</b>   |
|------------------------|-----------------------|----------------------------------------------|------------------|----------------|
| City of St Helens WWTP | 4/1/2022              | Multi-chlor 12.5% Sodium Hypochlorite: 07000 | 5,000 [gal] bulk | 1.545 [\$/gal] |

**PAYMENT TERMS:** Net 30 days  
**DEMURRAGE:** 2 [hr] free unload time / \$17.50 [p/quarter hr] thereafter  
**WEEKEND CHARGE:** \$300.00 + \$75.00 [p/hr], 2 [hr] minimum  
**RESTOCKING FEE:** 25%, + Freight

**EXPIRATION DATE:** 3/31/2022  
**LEAD TIME:** 3 DAYS after receipt of order

## ATTACHMENT B - INSURANCE REQUIREMENTS

Contractor and its subcontractors shall maintain insurance acceptable to the City in full force and effect throughout the term of this Contract.

It is agreed that any insurance maintained by the City shall apply in excess of, and not contribute toward, insurance provided by Contractor. The policy or policies of insurance maintained by Contractor and its subcontractors shall provide at least the following limits and coverage:

| TYPE OF INSURANCE                            | LIMITS OF LIABILITY                                                                                                                               |                                              | REQUIRED FOR THIS CONTRACT |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|----------------------------|
| <b>General Liability</b>                     | Each occurrence                                                                                                                                   | \$1,000,000                                  | YES                        |
|                                              | General Aggregate                                                                                                                                 | \$2,000,000                                  |                            |
|                                              | Products/Comp Ops Aggregate                                                                                                                       | \$2,000,000                                  |                            |
|                                              | Personal and Advertising Injury                                                                                                                   | \$1,000,000                                  |                            |
|                                              |                                                                                                                                                   | w/umbrella or<br>\$1,500,000<br>w/o umbrella |                            |
| Please indicate if Claims Made or Occurrence |                                                                                                                                                   |                                              |                            |
| <b>Automobile Liability</b>                  | Combined Single – covering any vehicle used on City business                                                                                      | \$2,000,000                                  | YES                        |
| <b>Workers' Compensation</b>                 | Per Oregon State Statutes<br>If workers compensation is not applicable please initial here _____. State the reason it is not applicable:<br>_____ |                                              | YES                        |
| <b>Professional Liability</b>                | Per occurrence                                                                                                                                    | \$500,000<br>or per contract                 | NO                         |
|                                              | Annual Aggregate                                                                                                                                  | \$500,000<br>or per contract                 |                            |

Contractor's general liability and automobile liability insurance must be evidenced by certificates from the insurers. The policies shall name the City, its officers, agents and employees, as additional insureds and shall provide the City with a thirty (30)-day notice of cancellation.

Workers' compensation insurance must be evidenced by a certificate from the insurer. The certificate need not name the City as an additional insured, but must list the City as a certificate holder and provide a thirty (30)-day notice of cancellation to the City.

Certificates of Insurance shall be forwarded to:

City Administrator  
City of St. Helens  
265 Strand Street  
St. Helens, OR 97051

Contractor agrees to deposit with the City, at the time the executed Contract is returned, Certificates of Insurance and Binders of Insurance if the policy is new or has expired, sufficient to satisfy the City that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificates and/or binders thereof on deposit with the City during the entire term of this Contract. Such certificates and/or binders must be delivered prior to commencement of the Work.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury or loss caused by negligence or neglect connected with this Contract.

## ATTACHMENT C - Terms of Compensation

| Customer Name          | Effective Date | Product                                      | Package          | Price          |
|------------------------|----------------|----------------------------------------------|------------------|----------------|
| City of St Helens WWTP | 4/1/2022       | Multi-chlor 12.5% Sodium Hypochlorite: 07000 | 5,000 [gal] bulk | 1.545 [\$/gal] |

**PAYMENT TERMS:** Net 30 days  
**DEMURRAGE:** 2 [hr] free unload time / \$17.50 [p/quarter hr] thereafter  
**WEEKEND CHARGE:** \$300.00 + \$75.00 [p/hr], 2 [hr] minimum  
**RESTOCKING FEE:** 25%, + Freight

**EXPIRATION DATE:** 3/31/2022  
**LEAD TIME:** 3 DAYS after receipt of order