

**THE GOVERNING BOARD OF THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
PURCHASE AND DELIVERY OF LIQUID ALUMINUM SULFATE
INVITATION FOR BID 37933**

The Governing Board of the St. Johns River Water Management District (the "District"), requests that interested parties respond to the solicitation below by 2:00 p.m., August 4, 2022. Further information is available through DemandStar at *Demandstar.com* [(800) 711-1712], Vendor Registry at *Vendorregistry.com*, or the District's website at *sjrwm.com*. Solicitation packages may be obtained from DemandStar, Vendor Registry, or the District by calling or emailing Amy Lucey, Senior Procurement Specialist, at 321-409-2156 or ALucey@sjrwm.com. Responses will be opened at the Palm Bay Service Center, 525 Community College Parkway SE, Palm Bay, FL 32909.

Contractor shall deliver liquid aluminum sulfate on an "as needed" basis to project sites listed in the Statement of Work for use in various treatment projects to capture and settle phosphorous prior to discharge of pumped waters to surface water bodies.

Contractor shall provide commercial quality liquid aluminum sulfate (17% Al_2O_3 dry basis) that meets or exceeds ANSI/AWWA Standard B403-09, and deliver in liquid bulk, chemical tank truck loads (approximately 4,500 gal. wet, 12-13 tons dry).

The contract will be issued for a three-year period with an estimated budget for the three-year period of \$525,000.00.

Special accommodations for disabilities may be requested through Amy Lucey, Senior Procurement Specialist, at 321-409-2156 or by calling (800) 955-8771 (TTY), at least five business days before the date needed.

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INSTRUCTIONS TO RESPONDENTS

1. DEFINITIONS

The definitions of capitalized terms used in this solicitation that are not otherwise defined herein can be found in the sample contract document (the “Agreement”) that is at the end of these instructions. The Agreement includes these Instructions to Respondents, any addenda published by the District, the bid provided by Respondent (the “Bid”), and all required certifications and affidavits.

2. CONTRACT ADMINISTRATION

All inquiries related to this solicitation may only be directed to the Procurement Specialist:

Amy Lucey, Senior Procurement Specialist
 Phone: 321-409-2156
 Fax: 321-722-5357
 Email: ALucey@sjrwmd.com

Between the release of this solicitation and the posting of the notice of intended decision, Respondents to this solicitation or persons acting on their behalf may not contact any employee or officer of the District concerning any aspect of this solicitation, except the procurement employee listed above. Violation of this provision is grounds for rejecting a response.

3. WHERE TO DELIVER BID

Respondents can now upload bid documents directly to www.demandstar.com

or

The Bid must be submitted in a sealed envelope to:

Amy Lucey, Senior Procurement Specialist
 St. Johns River Water Management District
 Palm Bay Service Center
 525 Community College Parkway SE, Palm Bay, FL 32909

Respondents must clearly label the Bid envelope with **large bold, and/or colored lettering (place label on inner envelope if double sealed)** as follows:

SEALED BID — DO NOT OPEN
 Respondent’s Name: _____
 Invitation for Bid: 37933
 Opening Time: 2:00 p.m.
 Opening Date: August 4, 2022

4. OPENING OF BIDS

Respondents or their authorized agents are invited to attend the opening of the Bids at the following time and place:

2:00 p.m., August 4, 2022
 St. Johns River Water Management District
 Palm Bay Service Center
 525 Community College Parkway SE, Palm Bay, FL 32909

The Florida Public Records Act, §119.071(1)(b), Fla. Stat., exempts sealed Bids from inspection and copying until such time as the District provides notice of an intended decision pursuant to §120.57(3)(a), Fla. Stat., or until 30 days after opening of bids, proposals, submittals, or final replies, whichever is earlier. This exemption is not waived by the public opening of the Bids.

Unless otherwise exempt, Respondent's Bid is a public record subject to disclosure upon expiration of the above exemption period. If any information submitted with the Bid is a trade secret as defined in §812.081, Fla. Stat., and exempt from disclosure pursuant to §815.04, Fla. Stat., Respondent must clearly identify any such material as "CONFIDENTIAL TRADE SECRET" in its Bid and explain the basis for such exemption. The District reserves the right, in its sole judgment and discretion, to reject a Bid for excessive or unwarranted assertion of trade secret confidentiality and return the Bid to Respondent.

5. PREPARATION AND ORGANIZATION OF BID DOCUMENTS

Respondent must submit its Bid in "digital" format. Instructions for submitting are provided below.

1. Respondents must submit the following fully executed documents on reproduced copies of the attached forms provided in FORMS:
 - a. Bid Form
 - b. Cost Schedule
 - c. Certificate as to Corporation
 - d. Affidavit as to Non-collusion and Certification of Material Conformance with Specifications
 - e. Qualifications (General, Similar Projects, Client References, Subcontractors, and other required qualification forms)
 - f. Drug-Free Workplace Form (not required unless there is a tie bid)
2. Respondents must submit the original bid package in the form and manner specified herein. All blank spaces on the bid documents must be typewritten or legibly printed in ink. Respondent must specify the cost for any one complete bid item or the entire work described in the Agreement (the "Work") in figures as indicated by the spaces provided. In the event you decline to submit a bid, the District would appreciate submittal of the "No Response Form" provided at the end of the "FORMS" section to describe the reason for not submitting a bid.
3. Respondent must follow all procedures for digital submission or the Respondent's Bid may be determined as "non-responsive" and rejected.
4. Unless directed otherwise, all information required by the solicitation, including the forms and questionnaires listed under "A" above must be completed (typed or hand written) and included in the submission in electronic format (forms must be completed and converted/scanned to PDF format (Adobe)).
5. The file-naming conventions for the bid shall include:
 - g. Bid: IFB # Respondent's name (abbreviated) Due Date
 (Example: IFB 12345 ABC Company 01-15-16)

6. All digitally submitted files shall be saved to a single CD or pin/thumb/jump drive. The CD or pin/thumb/jump drive **MUST** be placed in a sealed envelope pursuant to the instructions under Item 3 for sealed Bid – **DO NOT SUBMIT YOUR BID BY EMAIL — THIS WILL RESULT IN THE BID BEING REJECTED AS NON-RESPONSIVE.**
7. Please do **NOT** password protect your files. The District recommends that Respondents confirm their Submittal will open correctly on a non-company owned computer. Any electronic submittal received by the District that does not open on a District-owned computer is subject to rejection as a defective response.

All of the forms and questionnaires in the Invitation for Bids package are available upon request in Microsoft® Word to aid the Respondent in submitting its Bid.

If you need assistance or have any questions about the format, please call or email Amy Lucey at 321-409-2156 or ALucey@sjrwmd.com.

6. INQUIRIES AND ADDENDA

District staff are not authorized to orally interpret the meaning of the specifications or other Agreement documents, or correct any apparent ambiguity, inconsistency, or error therein. In order to be binding upon the District, the interpretation or correction must be given by the Procurement Specialist and must be in writing. The Procurement Specialist may orally explain the District's procedures and assist Respondents in referring to any applicable provision in the Invitation for Bids documents, but the Respondent is ultimately responsible for submitting the Bid in the appropriate form and in accordance with written procedures.

Every request for a written interpretation or correction must be received at least nine days prior to opening of Bids in order to be considered. Requests may be submitted by fax at 321-722-5357 or by email at ALucey@sjrwmd.com. Interpretations, corrections, and supplemental instructions will be communicated by written addenda to this solicitation posted by DemandStar and Vendor Registry to all prospective Respondents (at the respective addresses furnished for such purposes) no later than five days before the opening of Bids.

Submission of a Bid constitutes acknowledgment of receipt of all addenda. Bids will be construed as though all addenda had been received. Failure of the Respondent to receive any addenda does not relieve Respondent from any and all obligations under the Bid, as submitted. All addenda become part of the Agreement.

7. BUDGET

The estimated budget for the Work is \$525,000.00 over the Contract period of three years. The above amount is an estimate only and does not limit the District in awarding the Agreement. Respondents are cautioned to not make any assumptions from the budget estimate about the total funds available for the Work. The District retains the right to adjust the estimate in awarding the Agreement. The District also reserves the right to reject all Bids if subsequent negotiations with qualified Respondents result in costs over this estimated budget amount. In addition, the District reserves the right to increase, decrease, or delete any class, item, or part of the Work in order to reduce costs for any reason. The District may discuss alternatives for reducing the cost of the Work with Respondents and make such modifications as it determines to be in its best interest.

8. MINIMUM QUALIFICATIONS

Respondent must use the "Qualification" forms (General, Similar Projects, and Client References) provided in these documents to document the minimum qualifications listed below. The clients listed on the similar projects shall be used as client references. Failure to include these forms with the Bid may be considered non-responsive.

- a. Respondent (or a combination of the firm, individual, or project manager assigned to the work) must have successfully completed at least **one** project of a similar nature (supply and delivery of at least 3,000 tons (dry weight) of aluminum sulfate) within the **three** years immediately preceding the date for receipt of Bids. The project must have had a project value of at least \$150,000.
- b. Respondent must have no less than **three** years of experience on projects of the nature specified above.
- c. Liquid aluminum sulfate (17% Al₂O₃ dry basis), shall be commercial quality, and must meet or exceed ANSI/AWWA Standard B403-09. Respondent shall provide proof that its product conforms to ANSI/AWWA Standard B403-09 and provide its Safety Data Sheet.,

Irrespective of the minimum qualifications stated above, the District may make such investigations as it deems necessary to determine the ability of the Respondent to perform the Work. The District reserves the right to reject any Bid if the evidence submitted by such Respondent and/or the District's independent investigation of such Respondent fails to satisfy the District that such Respondent is properly qualified to carry out the obligations of the Agreement and complete the Work in a manner acceptable to the District within the time period specified.

9. **BID GUARANTY**

For the purposes of this Bid, a Bid guaranty is not required.

10. **SUBCONTRACTS**

Respondent must identify all portions of the Work Respondent intends to perform through subcontractors for each portion of the Work exceeding ten percent of the Work on the attached "Proposed Subcontractors" form. Respondent must submit with its Bid a list of all known subcontractors who will participate in more than ten percent of the Work. Acceptance of the Bid does not constitute approval of the subcontractors identified with the Bid.

11. **SIGNATURE AND CERTIFICATION REQUIREMENTS**

An individual submitting a Bid must sign his/her name therein and state his/her address and the name and address of every other person interested in the Bid as principal. If a firm or partnership submits the Bid, state the name and address of each member of the firm or partnership. If a corporation submits the Bid, an authorized officer or agent must sign the Bid, subscribing the name of the corporation with his or her own name and affixing the corporate seal. Such officer or agent must also provide the name of the state under which the corporation is chartered, and the names and business addresses of the President, Secretary, and Treasurer. Corporations chartered in states other than Florida must submit evidence of registration with the Florida Secretary of State for doing business in the State of Florida. Respondent must certify that all persons or entities having an interest as principal in the Bid or in substantial performance of the Work have been identified in the Bid forms.

12. **DISQUALIFICATION OF RESPONDENTS**

Any of the following causes will be considered as sufficient grounds for disqualification of a Respondent and rejection of the Bid:

- a. Contacting a District employee or officer other than the procurement employee named in this solicitation about any aspect of this solicitation before the notice of intended decision is posted.
- b. Submission of more than one Bid for the same subject matter by an individual, firm, partnership, or corporation under the same or different names;
- c. Evidence of collusion among Respondents;
- d. Submission of materially false information with the Bid;

- e. Information gained through checking of references or other sources which indicates that Respondent may not successfully perform the Work;
- f. Respondent is failing to adequately perform on any existing contract with the District;
- g. Respondent has defaulted on a previous contract with the District;
- h. The evidence submitted by Respondent, or the District's investigation of Respondent, fails to satisfy the District that Respondent is properly qualified to carry out the obligations of the Agreement in a manner acceptable to the District and within the time period specified;
- i. Any other cause that is sufficient to raise doubt regarding the ability of a Respondent to perform the Work in a manner that meets the District's objectives for the Work.

13. REJECTION OF BID

Bids must be delivered to the specified location and received before the Bid opening in order to be considered. Untimely Bids will be returned to the Respondent unopened. Bids will be considered irregular and may be rejected if they show material omissions, alterations of form, additions not called for, conditions, limitations, or other material irregularities. The District may consider incomplete any Bid not prepared and submitted in accordance with the provisions specified herein, and reserves the right to waive any minor deviations or irregularities in an otherwise valid Bid.

The District reserves the right to reject any and all Bids and cancel this request for qualifications when it determines, in its sole judgment and discretion, that it is not in its best interest to award the agreement.

14. WITHDRAWAL OF BIDS

Respondent may withdraw its Bid if it submits such a written request to the District prior to the designated date and hour of opening of Bids. Respondent may be permitted to withdraw its Bid no later than 72 hours after the Bid opening for good cause, as determined by the District in its sole judgment and discretion.

15. AWARDING THE AGREEMENT

- a. The Agreement will be awarded to the lowest responsive, responsible Respondent, being the Respondent with the lowest Total Bid Cost who demonstrates, in accordance with the requirements of the bid documents, a verifiable history of the skill, ability, integrity, and reliability necessary for the faithful performance of the Agreement (the "Successful Respondent"). The Agreement may be modified based on the District's acceptance of any alternatives listed in the bid that the District deems in its best interest.
- b. Section 286.0113, Fla. Stat., exempts from being open to the public, any portion of a meeting at which: (1) a negotiation with a Respondent is conducted pursuant to a competitive solicitation; (2) a Respondent makes an oral presentation as part of a competitive solicitation; (3) a Respondent answers questions as part of a competitive solicitation; or (4) negotiation strategies are discussed. Also, recordings of, and any records presented at, the exempt meeting are exempt from §119.07(1) and §24(a), Art. I of the State Constitution (Public Records) until such time as the District provides notice of an intended decision or until 30 days after opening the bids, proposals, submittals, or final replies, whichever occurs earlier. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.
- c. Pursuant to §286.0113 Fla. Stat., if the District rejects all bids and concurrently provides notice of its intent to reissue the competitive solicitation, any recordings or records presented at any exempt meeting relating to the solicitation shall remain exempt from §119.07(1) and §24(a), Art. I of the State Constitution (Public Records) until such time as the District provides notice of an intended decision concerning the reissued competitive solicitation or until the District withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial District notice rejecting all bids.

- d. If two or more bids are equal in all respects, the Agreement will be awarded as follows: (1) to the Respondent that certifies compliance with §287.087, Fla. Stat., via the Drug-Free Workplace Form; (2) to a Respondent university in the State University System pursuant to §373.63, Fla. Stat.; (3) to a Respondent whose bid contains commodities manufactured, grown, or produced within the State of Florida pursuant to §287.082 Fla. Stat.; or (4) by lot.
- e. The District reserves the right to award the Agreement to the next lowest available bidder in the event the Successful Respondent fails to enter into the Agreement, or the Agreement with said Respondent is terminated within 90 days of the effective date.
- f. All Respondents will be notified of the District's intent to award or decision to award the Agreement. For the purpose of filing a bid protest under §120.57(3), Fla. Stat., the time period will commence as provided in "NOTICES AND SERVICES THEREOF."

16. EXECUTION OF AGREEMENT

Submittal of a Bid binds the Successful Respondent to perform the Work upon acceptance of the Bid and execution of the Agreement by the District.

Unless all Bids are rejected, a contract substantially in the form included in these documents will be provided to the Successful Respondent, who must execute and return the Agreement to the District within ten days of the date of receipt, along with the following:

- a. A completed Internal Revenue Service Form W-9
- b. Satisfactory evidence of all required insurance coverage
- c. Proof satisfactory to the District of the authority of the person or persons executing the Agreement on behalf of Respondent
- d. All other information and documentation required by the Agreement

The District will not execute the Agreement until the above documents have been executed and delivered to the District. The Agreement will not be binding until executed by the District. A copy of the fully executed Agreement will be delivered to the Successful Respondent. The District reserves the right to cancel award of the Agreement without liability at any time before the Agreement has been fully executed by all parties and delivered to the Successful Respondent.

Failure upon the part of the Successful Respondent to execute the Agreement or timely submit the required evidence of insurance coverage, or any other matter required by the Agreement, will be just cause, if the District so elects, for the recommended award to be annulled.

17. EXAMINATION OF AGREEMENT DOCUMENTS AND WORK AREA

Respondent is solely responsible for being fully informed of the conditions under which the Work is to be performed in relation to existing conditions. Respondent is responsible for carefully examining the general area of the Work, the requirements of the drawings and other contract documents related to the Work, the time in which the Work must be completed, and any other details of the Work. Respondent must satisfy itself from its own personal knowledge and experience or professional advice as to the character of the Work, the conditions and materials to be encountered, the character, quality, and quantities of the Work, and any other conditions affecting the Work, including surrounding land.

Failure to satisfy the obligations of this paragraph will not relieve a Successful Respondent of its obligation to furnish all material, equipment, and labor necessary to perform the Agreement and to complete the Work for the consideration set forth in its Bid. Any such failure will not be sufficient cause to submit a claim for additional compensation.

No verbal agreement or conversation with any District officer, agent or employee, either before or after the execution of the Agreement, will affect or modify any of its terms.

18. DIVERSITY

The District is committed to the opportunity for diversity in the award and performance of all procurement activities. The District encourages its Prime Respondents to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as second and lower tier participants. The District will assist Respondents by sharing information on W/MBEs to encourage their participation.

19. FLORIDA SALES TAX

The District is exempt from payment of State of Florida sales tax pursuant to §212.08(6), Fla. Stat. Any tangible personal property that is the subject of this Invitation for Bids is intended to remain tangible personal property and not become part of a public work owned by the District.

20. PUBLIC ENTITY CRIMES/DISCRIMINATORY VENDORS

In accordance with §287.133 and §287.134, Fla. Stat., a person or affiliate who has been placed on the convicted or discriminatory vendor lists following a conviction for a public entity crime or placement on the discriminatory vendor list 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, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in §287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted or discriminatory vendor lists.

21. USE BY OTHER FLORIDA GOVERNMENTAL ENTITIES

Respondent may provide services to other State of Florida governmental entities pursuant to the terms and conditions of the Agreement. These governmental entities include other water management districts, state of Florida agencies (including members of the state university system and community college system), counties, school boards, municipalities, special districts, and other local public agencies or authorities. References to the St. Johns River Water Management District in the Agreement will be replaced with the purchasing entity and the District will not be a party to any other governmental entity's agreement to purchase. Nor will the District be responsible for payment for any goods or services delivered or performed for any other governmental entity that utilizes Respondent pursuant to this paragraph.

22. NOTICES AND SERVICES THEREOF

The District will publish notice of specifications and criteria, including addenda, intended agency decisions, or other matters pertinent to this solicitation on Onvia DemandStar at *DemandStar.com* and Vendor Registry at *vendorregistry.com*. Onvia DemandStar and Vendor Registry may also be accessed through the District's web site at *sjrwm.com*. In addition, the District will post notices of intended agency decisions at the District's headquarters, 4049 Reid Street, Palatka, Florida, Administration Building, Procurement Bulletin Board, on the date the publication is posted on Onvia DemandStar.

Notices that are posted on Onvia DemandStar and Vendor Registry are deemed received at 8:00 a.m. on the next business day following the date posted. Notices that are posted at the District's Procurement Bulletin Board are deemed received at 8:00 a.m. on the next business day following the date of posting. Notices will be posted for a minimum of 72 hours following the time at which they are deemed received. The time period for filing a Notice of Protest pursuant to §120.57(3), Fla. Stat., and Rule 28-110.003, Fla. Admin. Code, commences at the time notices are deemed received.

As a courtesy to Respondents, the District may send copies of the notices of intended agency decisions via email or facsimile to Respondent. These courtesy communications neither constitute official notice nor vary the times of receipt set forth above.

23. **PROTEST PROCEDURES**

Pursuant to §120.57(3), Fla. Stat., and Rule 28-110.003, Fla. Admin. Code, any person adversely affected by the procurement methodology described herein, or the specifications or criteria, including addenda, must file a Notice of Protest within 72 hours after receipt of the solicitation documents or addenda.

Pursuant to §120.57(3), Fla. Stat., and Rule 28-110.003, Fla. Admin. Code, any person adversely affected by a District decision or intended decision to award a contract, or to reject all bids, proposals, or qualifications, must file a Notice of Protest within 72 hours after receipt of the decision or intended decision. Pursuant to §120.57(3), Fla. Stat., and Rule 28-110.004, Fla. Admin. Code, the protester must also file with the District Clerk a Formal Written Protest within ten days after the date the Notice of Protest is filed with the District. The Formal Written Protest must state with particularity the facts and law upon which the protest is based. Pursuant to §287.042(2)(c), Fla. Stat., any person who files an action protesting the decision or intended decision must post with the District Clerk at the time of filing the formal written protest a bond, cashier's check, or money order made payable to the St. Johns River Water Management District in an amount equal to one percent (1%) of the estimated contract amount.

No additional time will be added for mailing. All filings must comply with Rule 28-106.104, Fla. Admin. Code, and must be addressed to and received by the District Clerk at the District Headquarters in Palatka, Florida within the prescribed time periods. The District will not accept as filed any electronically transmitted facsimile pleadings, petitions, Notice of Protest or other documents. Failure to file a protest within the time prescribed in §120.57(3), Fla. Stat., or failure to post the bond or other security required by law within the time allowed for filing a bond will constitute a waiver of proceedings under chapter 120, Fla. Stat. Mediation under §120.573, Fla. Stat., is not available.

FORMS
BID FORM

Include this form in the response

RESPONDENT:

The undersigned, as Respondent, hereby declares and certifies that the only person(s) or entities interested in this bid as principal(s), or as persons or entities who are not principal(s) of the Respondent but are substantially involved in performance of the Work, is or are named herein, and that no person other than herein mentioned has any interest in this bid or in the Agreement to be entered into; that this bid is made without connection with any other person, company, or parties making a bid; and that this bid is in all respects fair and in good faith without collusion or fraud.

Respondent represents to the District that, except as may be disclosed in an addendum hereto, no officer, employee or agent of the District has any interest, either directly or indirectly, in the business of Respondent to be conducted under the Agreement, and that no such person shall have any such interest at any time during the term of the Agreement, should it be awarded to Respondent.

Respondent further declares that it has examined the Agreement and informed itself fully in regard to all conditions pertaining to this solicitation; it has examined the specifications for the Work and any other Agreement documents relative thereto; it has read all of the addenda furnished prior to the bid opening, as acknowledged below; and has otherwise satisfied itself that it is fully informed relative to the Work to be performed.

Respondent agrees that if its bid is accepted, Respondent shall contract with the District in the form of the attached Agreement, and shall furnish everything necessary to complete the Work in accordance with the time for completion specified in the Agreement, and shall furnish the required evidence of the specified insurance.

Acknowledgment is hereby made of the following addenda (identified by number) received:

Addendum No.	Date	Addendum No.	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Respondent (firm name) _____
Date

Address

Email address

Signature _____
Telephone number

Typed name and title _____
Fax number

COST SCHEDULE

Include this form in the response

Bid to be opened at 2:00 p.m., August 4, 2022

To: ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

In accordance with the advertisement requesting bids for the Purchase and Delivery of Liquid Aluminum Sulfate, subject to the terms and conditions of the Agreement, the undersigned proposes to perform the Work for the price contained in the following schedule (fill in all blanks).

If said bid exceeds the estimated amount previously provided, the District expressly reserves the right to increase, decrease, or delete any class, item, or part of the Work, as may be determined by the District.

Respondents are reminded to refer to "PREPARATION AND ORGANIZATION OF BID DOCUMENTS" for information to be included with the bid package.

The bid will be awarded to the lowest responsive and responsible Respondent for the Total Bid Cost per Dry Weight Ton of Alum.

Total Bid Cost per Dry Weight Ton of Alum: \$ _____

Total Bid Cost per Dry Weight Ton of Alum in words: _____

Pursuant to §287.084(2) Fla. Stat., a vendor whose principal place of business is outside the State of Florida must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

I HEREBY ACKNOWLEDGE, as Respondent's authorized representative, that I have fully read and understand all terms and conditions as set forth in this bid and upon award of such bid, shall fully comply with such terms and conditions.

Date

Respondent (firm name)

Address

E-mail address

Signature

Telephone number

Typed name and title

Fax number

PROPOSED SUBCONTRACTORS

Include this form in the response

Respondent must identify all portions of the Work Respondent intends to perform through subcontractors.

1. Name and address of subcontractor: _____

Description of work: _____

Estimated value of Work: _____
2. Name and address of subcontractor: _____

Description of work: _____

Estimated value of Work: _____
3. Name and address of subcontractor: _____

Description of work: _____

Estimated value of Work: _____
4. Name and address of subcontractor: _____

Description of work: _____

Estimated value of Work: _____
5. Name and address of subcontractor: _____

Description of work: _____

Estimated value of Work: _____
6. Name and address of subcontractor: _____

Description of work: _____

Estimated value of Work: _____

CERTIFICATE AS TO CORPORATION

Include this form in the response

The below Corporation is organized under the laws of the State of _____; is authorized by law to respond to this Invitation for Bids and perform all work and furnish materials and equipment required under the Agreement, and is authorized to do business in the state of Florida.

Corporation name: _____

Address: _____

Registration No.: _____

Registered Agent: _____

By: _____

(Official title)

(Affix corporate seal)

Attest: _____

(Secretary)

The full names and business or residence addresses of persons or firms interested in the foregoing bid as principals or officers of Respondent are as follows (specifically include the President, Secretary, and Treasurer and state the corporate office held of all other individuals listed):

Identify any parent, subsidiary, or sister corporations involving the same or substantially the same officers and directors that will or may be involved in performance of the Project, and provide the same information requested above on a photocopy of this form.

If applicable, attach a copy of a certificate to do business in the state of Florida, or a copy of the application that has been accepted by the state of Florida to do business in the state of Florida, for the Respondent and/or all out-of-state corporations that are listed pursuant to this form.

AFFIDAVIT AS TO NON-COLLUSION AND CERTIFICATION OF MATERIAL CONFORMANCE WITH SPECIFICATIONS

Include this form in the response

STATE OF _____

COUNTY OF _____

I, the undersigned, _____ being first duly sworn, depose and say that:

1. I am the owner or duly authorized officer, representative, or agent of:

_____ the Respondent that has submitted the attached bid.

2. The attached bid is genuine. It is not a collusive or sham bid.

3. I am fully informed respecting the preparation and contents of, and knowledgeable of all pertinent circumstances respecting the attached bid.

4. Neither Respondent nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Respondent, firm, or person to submit a collusive or sham bid in connection with the Agreement for which the attached bid has been submitted, or to refrain from bidding in connection with such Agreement, or has in any manner, directly or indirectly, sought by agreement, collusion, communication, or conference with any other Respondent, firm, or person to fix the price or prices in the attached bid of any other Respondent, or to fix any overhead, profit, or cost element of the bid prices or the bid price of any other Respondent, or to secure through collusion, conspiracy, connivance, or unlawful agreement any advantage against the District or any other person interested in the proposed Agreement.

5. The price(s) quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Respondent or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

6. No official or other officer or employee of the District, whose salary or compensation is payable in whole or in part by the District, is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work, or labor to which it relates, or in any of the profits therefrom.

7. Any materials and equipment proposed to be supplied in fulfillment of the Agreement to be awarded conform in all respects to the specifications thereof. Further, the proposed materials and equipment will perform the intended function in a manner acceptable and suitable for the intended purposes of the District.

Signature: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20 ____.

Notary Public, state of _____ at Large

My commission expires:

(SEAL)

QUALIFICATIONS — GENERAL

Include this form in the response

As part of the bid, Respondent shall complete the following so that the District can determine Respondent’s ability, experience, and facilities for performing the Work.

Name of Respondent: _____

Respondent’s tax identification No.: _____

Year company was organized/formed: _____

Number of years Respondent has been engaged in business under the present firm or trade name: _____

Total number of years Respondent has experience in supply and delivery of a least 6000 dry weight tons of aluminum sulfate is work described in the INSTRUCTIONS TO RESPONDENTS: _____

Has Respondent previously been engaged in the same or similar business under another firm or trade name? If so, please describe each such instance.

Has Respondent ever been adjudicated bankrupt, initiated bankruptcy, or been the subject of bankruptcy proceedings on behalf of the current entity submitting this bid or a prior entity that Respondent substantially operated or controlled? If yes, please describe the nature and result of those proceedings and the entity involved.

Describe the background/experience of the person or persons who will be primarily responsible for directing the Work that will be performed pursuant to this bid. This inquiry is intended to encompass the project manager and/or superintendent who will be engaged on a daily basis in directing performance of the Work.

QUALIFICATIONS — SIMILAR PROJECTS

Include this form in the response

Respondent (or a combination of the firm, individual, or project manager assigned to the work) must have successfully completed at least one similar projects within the three years immediately preceding the date set for receipt of the response, as described in the INSTRUCTIONS TO RESPONDENTS. Each project shall have had a project value of at least \$50,000.00. (Add additional sheet for optional additional completed projects.)

Completed Project 1:

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ Email: _____

Address of agency/company: _____

Name of project: _____

Description: _____

Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____

Others: _____

Completed Project 2:

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ Email: _____

Address of agency/company: _____

Name of project: _____

Description: _____

Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____

Others: _____

DRUG-FREE WORKPLACE FORM

This form required only in the event of a tie response

The Respondent, (business name) _____, in accordance with §287.087, Fla. Stat., hereby certifies that Respondent does the following:

1. Informs employees about the dangers of drug abuse in the workplace, the business’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations
2. Publishes a statement notifying employees that
 - a. the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against its employees for violations of such prohibition.
 - b. as a condition of working on the contractual services that are the subject of this solicitation, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893, Fla. Stat., or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five days after such conviction.
3. Gives each employee engaged in providing the contractual services that are the subject of this solicitation a copy of the statement specified in paragraph 2, above.
4. Imposes a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee’s community, by any employee convicted of a violation listed in sub-paragraph 2.b., above.
5. Makes a good faith effort to continue to maintain a drug-free workplace through implementation of §287.087, Fla. Stat.

As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.

By: _____

Title: _____

Date: _____/

NO RESPONSE FORM
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
INVITATION FOR BIDS 37933

Your reasons for not responding to this Invitation for Bids are valuable to the St. Johns River Water Management District’s procurement process. Please complete this form and return it to the Office of Financial Services no later than the date set for receipt of bids. Thank you for your cooperation.

Please check (as applicable):

- Specifications too “general” (explain below)
- Insufficient time to respond to the solicitation
- Do not provide this type of work for this project
- Schedule would not permit us to perform
- Unable to meet solicitation specifications
- Specifications unclear (explain below)
- Disagree with solicitation or Agreement terms and conditions (explain below)
- Other (specify below)

Remarks: _____

DATE _____

RESPONDENT (FIRM NAME) _____

ADDRESS _____

E-MAIL ADDRESS _____

SIGNATURE

TYPED NAME AND TITLE

TELEPHONE NUMBER

FAX NUMBER

**AGREEMENT
BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND _____ TO/FOR
PURCHASE AND DELIVERY OF LIQUID ALUMINUM SULFATE**

THIS AGREEMENT is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (the "District"), whose address is 4049 Reid Street, Palatka, Florida 32177-2571, and _____ (""), whose address is _____ . All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

In consideration of the payments hereinafter specified, Supplier agrees to furnish and deliver all materials and perform all labor required for 37933, Purchase and Delivery of Liquid Aluminum Sulfate (the "Work"). In accordance with IFB 37933, Supplier shall complete the Work in conformity with this Agreement, which consists of and incorporates all of the following documents: (1) advertisement for bids, proposals, or qualifications; (2) Instructions to Respondents; (3) addenda; certifications, and affidavits; (4) bid, proposal, or qualifications submittals; (5) Agreement, including the Statement of Work, and any Special Conditions or other attachments. If any provision in the body of this Agreement conflicts with any attachment hereto, the body of this Agreement shall prevail. This Agreement, including attachments, shall take precedence over all solicitation documents (items 1 – 4). The parties hereby agree to the following terms and conditions.

1. TERM

- (a) The term of this Agreement shall be from the Effective Date to the Completion Date. Time is of the essence for each and every aspect of this Agreement. Where additional time is allowed to complete the Work, the new time limit shall also be of the essence. All provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof.
- (b) **Effective Date.** The Effective Date is the date upon which the last party to this Agreement has dated and executed the same.
- (c) **Completion Date.** The Completion Date of this Agreement is September 30, 2025, unless extended by mutual written agreement of the parties. The Work shall be completed for use no later than said date.

2. LIQUIDATED DAMAGES

- (a) If Supplier neglects, fails, or refuses to satisfactorily complete the Work by the Completion Date, Supplier shall, as a part of the consideration for this Agreement, pay the District the amount stipulated herein, not as a penalty, but as liquidated damages for such breach, for each day Supplier is in default thereafter. This amount is fixed and agreed upon between the parties due to the impracticability and extreme difficulty of ascertaining the actual damages the District would sustain in such event. The amount of liquidated damages shall be one half of one percent (.5%) of the total contract amount per day. Liquidated damages shall be deducted from payments as they become due and may be deducted from the retainage due upon completion. They constitute an agreed-upon liquidated sum solely for consequential damages attributable to delay and are not a substitute for any other consequential damages incurred by the District, such as the cost of finding a replacement Supplier for completion of the Work if this Agreement is terminated by the District for non-performance.

- (b) Supplier shall not be charged with liquidated damages or any excess cost when the District determines that Supplier’s reasons for the time extension are acceptable in accordance with **FORCE MAJEURE; DELAYS; EXTENSION OF COMPLETION DATE**. A written extension of the Completion Date constitutes a waiver of liquidated damages to the new Completion Date unless expressly provided therein to the contrary.

3. DELIVERABLES

- (a) The Work is specified in the Statement of Work, Attachment A. Supplier shall deliver all products and deliverables as stated therein. Supplier is responsible for the professional quality, technical accuracy, and timely completion of the Work. Both workmanship and materials shall be of good quality. Supplier shall, if required, furnish satisfactory evidence as to the kind and quality of materials provided. Unless otherwise specifically provided for herein, Supplier shall provide and pay for all materials, labor, and other facilities and equipment necessary for performance of the Work. The District’s Project Manager shall make a final acceptance inspection of the deliverables when completed and finished in all respects.
- (b) If not otherwise addressed in the Statement of Work, upon written request, Supplier shall submit written progress reports to the District’s Project Manager at the frequency requested in the form approved by the Project Manager at no additional cost to the District. The progress report shall provide an updated progress schedule, taking into account all delays and approved changes in the Work. Failure to provide a progress report will be cause to withhold payment.

- 4. **OWNERSHIP OF DELIVERABLES.** All deliverables, including Work not accepted by the District, are District property when Supplier has received compensation therefor, in whole or in part. Any District source documents or other District or non-District documents, specifications, materials, reports, or accompanying data developed, secured, or used in the performance of the Work, excluding proprietary materials, as outlined in a Statement of Work, are District property and shall be safeguarded and provided to the District upon request. District plans and specifications shall not be used on other work and, with the exception of the original plans and specifications, shall be returned to the District upon request. This obligation shall survive termination or expiration of this Agreement.

5. FUNDING OF AGREEMENT

- (a) For satisfactory performance of the Work, the District agrees to pay Supplier \$_____ per dry ton weight of alum for a maximum not to exceed \$525,000 over a 3-year period (the “Total Compensation”). The parties may agree in writing to re-allocate funding from the amounts described below.

Fiscal Year: October 1, 2022 – September 30, 2023	Amount: \$	\$175,000.00
Fiscal Year: October 1, 2023 – September 30, 2024	Amount: \$	\$175,000.00
Fiscal Year: October 1, 2024 – September 30, 2025	Amount: \$	\$175,000.00

Funding for each applicable fiscal year is subject to District Governing Board budgetary appropriation.

- (b) **Annual budgetary limitation.** For multi-fiscal year agreements, the District must budget the amount of funds that will be expended during each fiscal year as accurately as possible. The Statement of Work, Attachment A, includes the parties’ current schedule for completion of the Work and projection of expenditures on a fiscal year basis (October 1 – September 30) (“Annual Spending Plan”). If Supplier anticipates that expenditures will exceed the budgeted amount during any fiscal year, Supplier shall promptly notify the District’s Project Manager and provide a proposed revised work schedule and Annual Spending Plan that provides for completion of the Work without increasing the Total Compensation. The last date for the District to receive this

request is August 1 of the then-current fiscal year. The District may in its sole discretion prepare a District Supplemental Instruction Form incorporating the revised work schedule and Annual Spending Plan during the then-current fiscal year or subsequent fiscal year(s).

6. PAYMENT OF INVOICES

- (a) Supplier shall submit itemized invoices on a delivery basis for the work by one of the following two methods: (1) by email to acctpay@sjrwm.com (preferred) or (2) by mail to the St. Johns River Water Management District, Finance Director, 4049 Reid Street, Palatka, Florida 32177-2571. Each invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review. If necessary for audit purposes, Supplier shall provide additional supporting information as required to document invoices.
- (b) **End of District Fiscal Year Reporting.** The District's fiscal year ends on September 30. Irrespective of the invoicing frequency, the District is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Supplier shall submit, prior to October 30, a description of the additional Work completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Supplier shall submit a description of the Work completed on the project through September 30 and a statement estimating the dollar value of that Work as of September 30.
- (c) **Final Invoice.** The final invoice must be submitted no later than 45 days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the District's fiscal year (September 30), the final invoice must be submitted no later than 30 days after the Completion Date. **Final invoices that are submitted after the requisite date shall be subject to a penalty of ten percent of the invoice. This penalty may be waived by the District, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Supplier must request approval for delayed submittal of the final invoice not later than ten days prior to the due date and state the basis for the delay.**
- (d) All invoices shall include the following information: (1) District contract number; (2) Supplier's name and address (include remit address, if necessary); (3) Supplier's invoice number and date of invoice; (4) District Project Manager; (5) Supplier's Project Manager; (6) supporting documentation as to cost and/or project completion (as per the cost schedule and other requirements of the Statement of Work; (7) Progress Report (if required); (8) Diversity Report (if otherwise required herein). Invoices that do not correspond with this paragraph shall be returned without action, stating the basis for rejection. Payments shall be made within 45 days of receipt of an approved invoice. Disputes regarding invoice sufficiency are resolved pursuant to the dispute resolution procedure of this Agreement.
- (e) **Travel expenses.** If the cost schedule for this Agreement includes a line item for travel expenses, travel expenses shall be drawn from the project budget and are not otherwise compensable. If travel expenses are not included in the cost schedule, they are a cost of providing the service that is borne by Supplier and are only compensable when specifically approved by the District as an authorized District traveler. In such instance, travel expenses must be submitted on District or State of Florida travel forms and shall be paid pursuant to District Administrative Directive 2000-02.
- (f) **Payments.** Absent exceptional circumstances, Supplier is required to sign up and receive payment(s) electronically from the District via Automated Clearing House (ACH) payment.

- (g) **Payments withheld.** The District may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to protect the District from loss as a result of: (1) defective Work not remedied; (2) failure of to make payments when due to subcontractors or suppliers for materials or labor; (3) failure to maintain adequate progress in the Work; (4) damage to another contractor; or (5) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.
- (h) **Payments.** The District shall pay Supplier 100% of each approved invoice.

7. PROVISION FOR COST BASED PRICE ADJUSTMENT.

Contractor may request a cost adjustment within 60 days of each contract anniversary date providing the cost of a significant raw material cost factor changes, as determined by the published cost index included in this Agreement, by 5% or more. If the cost factor changes by less than 5% (+ or -), no cost adjustment will be made and a maximum of 10% increase will be allotted per contract anniversary date.

The following Cost Adjustment Factor and associated percentage weight will be used to calculate adjustments to the price. Cost adjustments will be based on the following Bureau of Labor Statistics, Producer Price Index Commodity Data (PPI) published indice for **Series Id: WPU06130209 at 10%**; Not Seasonally Adjusted; Group: Chemicals and allied products; Item: Aluminum compounds; Base Date: 199506; Preliminary PPI, May 2022 (138.961) (<http://data.bls.gov/timeseries/WPU06130209>).

8. **PAYMENT AND RELEASE.** Upon satisfactory completion of the Work, the District will provide Supplier a written statement accepting all deliverables. Supplier's acceptance of final payment shall constitute a release in full of all Supplier claims against the District arising from the performance of this Agreement, with the exception of any pending claims for additional compensation that have been documented and filed as required by this Agreement.
9. **INDEMNIFICATION.** Supplier shall indemnify and hold harmless, release, and forever discharge the District, its public officers, employees, agents, representatives, successors, and assigns, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, arising from or caused by the Supplier, its employees or subcontractors, in the performance of the Work. Supplier shall further indemnify the District for all costs and penalties the District incurs related to any failure to offer Patient Protection and Affordable Care Act compliant health care coverage to Supplier-employees performing under this contract.
10. **INSURANCE.** Supplier shall acquire and maintain all insurance required by Attachment B, Insurance Requirements, and shall not commence Work until it has provided Certificates of Insurance to the District as per Attachment B. Receipt of Certificates of Insurance indicating less coverage than required does not constitute a waiver of the Insurance Requirements. Supplier waives its right of recovery against the District to the extent permitted by its insurance policies. Supplier's insurance shall be considered primary, and District insurance shall be considered excess, as may be applicable to Supplier's obligation to provide insurance.
11. **FUNDING CONTINGENCY.** This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) ad valorem tax revenues appropriated by the District's Governing Board; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole

discretion and judgment of the District's Governing Board for each succeeding Fiscal Year. Should the Work not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the District shall so notify Supplier and this Agreement shall be deemed terminated for convenience five days after receipt of such notice, or within such additional time as the District may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

12. PROJECT MANAGEMENT PERSONNEL

- (a) The Project Managers listed below shall be responsible for overall coordination and management of the Work. Either party may change its Project Manager upon three business days' prior written notice to the other party. Written notice of change of address shall be provided within five business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; (4) email or, (5) fax. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one business day after having been deposited with the courier. Notices via email or fax are deemed delivered on the date transmitted and received.

<u>DISTRICT</u>	<u>SUPPLIER</u>
Rayford McCain, Project Manager	TBD, Project Manager
St. Johns River Water Management District	TBD
19561 S.E. Highway 42	TBD
Umatilla, FL 32784-7814	TBD
Phone: 321-473-1332	Phone: TBD
Email: rmccain@sjrwm.com	Email: TBD

- (b) The District's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating District policies and decisions regarding all matters pertinent to performance of the Work.
- (c) Supplier shall provide efficient supervision of the Work, using its best skill and attention. Supplier shall keep, on the worksite during its progress, a competent superintendent that is satisfactory to the District. The superintendent shall not be changed except with the District's consent, unless the superintendent proves to be unsatisfactory to Supplier and/or ceases to be in its employ. The superintendent shall represent Supplier in the absence of Supplier's Project Manager. All directions given to him shall be as binding as if given to Supplier. If the District produces documented evidence and informs the Supplier that any person on the job is incompetent, disorderly, or is working contrary to the Agreement or the District's instructions, that person shall thereupon be immediately dismissed from the project and shall not be given employment on any work connected with this Agreement. The District may request Supplier replace its Project Manager if said manager fails to carry the Work forward in a competent manner, follow instructions or specifications, or for other reasonable cause.
- (d) Supplier shall maintain an adequate and competent professional staff. Supplier's employees, subcontractors, or agents shall be properly trained to meet or exceed any specified licensing, training and/or certification applicable to their profession. Upon request, Supplier shall furnish proof thereof.

13. SCHEDULING AND WORK PLANNING; PROGRESS REPORTING

- (a) **Progress Reports.** Supplier shall provide to the District update/status reports as provided in the Statement of Work. Reports will provide detail on progress of the Work and outline any potential

issues affecting completion or the overall schedule. Reports may be submitted in any form agreed to by District's Project Manager and Supplier, and may include emails, memos, and letters.

1. **Progress Meetings.** The District may conduct progress meetings with Supplier on a frequency to be determined by the District. In such event, Supplier shall make available its Project Manager and other appropriate personnel to discuss matters pertinent to the Work.
2. **Failure to Meet Schedule.** If progress of the Work falls five percent or more behind schedule, except as a result of District-approved delays, Supplier shall take all necessary steps to augment the work effort to get the project back on schedule. Should the progress of the Work fall ten percent or more behind schedule, the District may advise Supplier through a "cure" notice that this Agreement is subject to termination for cause if the failure is not cured within the time frame specified in said notice.

14. FORCE MAJEURE; DELAYS

- (a) **Force Majeure.** Supplier shall not be liable for failure to carry out the terms of this Agreement to the extent such failure is due to a Force Majeure event, except for failures that could have been reasonably foreseen and guarded against so as to avoid or reduce the adverse impact thereof. A Force Majeure event is hereby defined as the failure to carry out any of the terms of this Agreement due to any one of the following circumstances beyond the control of Supplier: (a) the operation and effect of rules, regulations, or orders promulgated by any commission, county, municipality, or governmental agency of the State of Florida or the United States, (b) a restraining order, injunction, or similar decree of any court of competent jurisdiction, (c) war, (d) flood, (e) earthquake, (f) fire, (g) severe wind storm, (h) acts of public disturbance, (i) quarantine restrictions, (j) epidemics, (k) strikes, (l) freight embargoes, or (m) sabotage. The times specified herein for performances include delays that can ordinarily be anticipated due to adverse weather conditions. The District is not obligated to grant an extension of time due to adverse weather conditions unless such conditions rise to the level of Force Majeure.
- (b) **Delay.** Supplier shall not be compensated for delays caused by Supplier's inefficiency, rework made necessary by Supplier's error, failure to perform the Work as scheduled, or any other corrective or productivity measures made necessary by errors, omissions, or failures to properly perform the Work. Within ten days after the onset of a delay, Supplier shall notify the District in writing of the delay, which shall provide: (1) a detailed description the delay and its probable duration, (2) the specified portion of the Work affected, and (3) an opinion as to the cause of the delay and liability (if any) for the delay. Notices provided more than ten days after the inception of the delay shall only be effective as to additional costs or delay incurred during the ten day period preceding receipt of such notice. In the case of continuing cause delay for the same cause, only one notice of delay is necessary. **Failure to provide this notice waives any claim for extension of time or additional compensation resulting from such delay.** If the delay is due to the failure of another District contractor to complete its work in a timely manner, changes ordered in the Work, a Force Majeure event, or any other cause which the District, in its sole judgment and discretion, determines to justify the delay, then the Completion Date may be extended as necessary to compensate for the delay. All time extensions shall be in the form of a written amendment signed by both parties.

15. MODIFICATION OF SPECIFICATIONS; CHANGE ORDERS; EMERGENCY CHANGES IN WORK

- (a) **Modification of Specifications.** No verbal agreement or conversation with any officer, agent, or employee of the District after execution of this Agreement shall affect or modify any of its terms.

No one is authorized to change any provision of the specifications without written authorization of the District. The presence or absence of a District inspector shall not relieve Supplier from any requirements of this Agreement. The District's Project Manager may also issue a District Supplemental Instruction (DSI) form (Attachment C) to authorize minor adjustments to the Work that are consistent with the purpose of the Work. A DSI may not be used to change the Total Compensation, quantity, quality or the Completion Date of the Work, or to change or modify the Agreement. The DSI shall indicate that both parties agree the adjustments to the Work do not affect the Total Compensation or the Completion Date. Both parties must sign the DSI. If Supplier believes that the proposed supplemental instructions will involve extra cost or extend the Completion Date and the District continues to direct that the DSI be implemented, Supplier shall implement said instructions and may submit a Change Order, subject to the dispute resolution procedure. In an emergency condition, the parties shall follow the procedure for "Emergency Changes in the Work."

(b) Change Orders

- (i) The District may alter, add to, or deduct from the Work by executing a Change Order without liability to Supplier, except for the reasonable cost of any additional Work. All such Work within Supplier's capacity to perform shall be performed pursuant to the Change Order. Any associated claim for extension of time will be adjusted when the Change Order is issued. The parties shall negotiate the cost of the Change Order on an equitable basis, which may be determined in one or more of the following ways: (1) estimate and acceptance of a lump sum, (2) unit prices named in the contract or subsequently agreed upon, (3) costs and percentage or by (4) cost and a fixed fee. If the parties cannot agree upon cost, Supplier shall implement the Change Order and shall maintain and present in such form as the District Project Manager may direct the correct amount of the net cost of labor and materials, together with vouchers. The Project Manager will certify the amount due Supplier, including reasonable allowances for overhead and profit. Pending a final determination of value, payments will be based upon the District Project Manager's certification. Final resolution of the amount due to Supplier shall be pursuant to the dispute resolution procedure.
- (ii) For any Change Order requests submitted by Supplier, the District may determine that District instructions to correct deficient Work, to stop the Work due to deficiencies in the Work, or any other matters that impose additional costs upon Supplier, do not warrant an increase in the Total Compensation or extension of the Completion Date. If Supplier disputes this determination, final resolution shall be pursuant to the dispute resolution procedure.

- (c) **Emergency Changes in Work.** In the event an emergency endangering life or property requires immediate action, the District may give Supplier an oral instruction to proceed with an emergency change in the Work, which will be confirmed in writing within five days. Within 15 days after commencement of the emergency change in the Work, Supplier shall provide the District with a written estimate of any increased costs or delays as a result thereof. **Failure to so notify the District constitutes a waiver of any right to an extension of time or increase in compensation.** Within 15 days after receipt of Supplier's estimate, the parties shall negotiate a Change Order. If unable to reach agreement, disputed issues shall be resolved pursuant to the dispute resolution procedure. In no event shall Supplier decline to perform the emergency change in the Work.

16. TERMINATION AND SUSPENSION

- (a) **District Termination for Cause.** The Agreement may be terminated by the District for cause in the event of any breach hereof, including, but not limited to, Supplier's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the District regarding the Work, or (9) any other material breach of this Agreement. In such event, the District shall provide Supplier with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the District's sole judgment and discretion, the District may afford Supplier an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the District may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient. In such event, Supplier shall not receive any further payment until the Work is completed by the District. Supplier shall be liable for all costs involved in completing the Work, including additional managerial and administrative services, which shall be offset against any amount due to Supplier.
- (b) **District Termination for Convenience.** Notwithstanding any other provision hereof, the District may at any time terminate this Agreement or any Work issued under it, in whole or in part, without cause, upon 30 days' written notice to Supplier. In such event, Supplier shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become District property. Upon receipt of notice, Supplier shall discontinue the Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. Supplier shall also make every reasonable effort to cancel, upon terms satisfactory to the District, all orders or subcontracts related to the terminated Work. Supplier may not claim any compensation not specifically provided for herein, including, but not limited to: loss of anticipated profits; idle equipment, labor, and facilities; any additional claims of subcontractors and vendors.
- (c) **District Suspension for Cause.** The District may issue a written partial or full Stop Work Notice in the event Supplier fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The District may terminate this Agreement if Supplier fails or refuses to comply with a Stop Work Notice.
- (d) **District Suspension for Convenience.** The District may direct Supplier to stop Work, in whole or in part, whenever, in the District's sole judgment and discretion, such stoppage is necessary to ensure proper completion of the Work, avoid injury to third persons, or otherwise meet the District's objectives. The District shall provide Supplier not less than five days' written notice, except in emergency circumstances. Supplier shall immediately comply with such notice. Should such stoppage increase Supplier's cost, an equitable adjustment will be made by Change Order. The notice shall be effective until rescinded in writing, unless the period of suspension is stated in the notice.
- (e) **Supplier's Right to Stop Work or Terminate Agreement**
- (i) **Stop Work.** Supplier may stop work only under the following circumstances: (1) the Work is ordered temporarily discontinued by a court or other public authority; (2) it is necessary to stop work in order to protect the safety of Supplier or third persons; or (3) the District

fails to pay Supplier when due any undisputed and adequately documented sum certified for payment by the District Project Manager. In such event, Supplier shall provide the District not less than seven days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.

- (ii) **Termination.** Supplier may terminate this Agreement under only the following circumstances: (1) the Work is ordered discontinued by a court or other public authority, through no act or fault of Supplier, for a period of not less than three months; (2) the District fails to pay Supplier when due any undisputed and adequately documented sum certified for payment by the District Project Manager. In such event, Supplier shall provide not less than 20 days written notice of its intention to terminate and afford the District the opportunity to cure said deficiency within said time period.
- (iii) **Duty to Perform.** Except as expressly provided above, in the event of any event, dispute, or other matter arising under this Agreement, Supplier shall fully perform the Work in accordance with the District's written instructions and may claim additional compensation as a Change Order, subject to the dispute resolution procedure.

ADDITIONAL PROVISIONS (In Alphabetical Order)

17. DEFINITIONS

ADDENDA: Written or graphic instruments issued prior to the opening of responses, which make additions, deletions, or revisions to the solicitation or contract documents.

AGREEMENT: The written contract between the District and Supplier covering the Work, which includes all documents attached to this Agreement or incorporated herein by reference. The words "contract" and "Agreement" are synonymous in these documents.

AMENDMENT: Any written change made to the terms and conditions of the Agreement.

BID: The written offer of Respondent (when submitted on the reproduced approved forms) to perform the Work and furnish the necessary materials in accordance with the provisions of this Agreement.

BUSINESS DAY: Monday through Friday, excepting those holidays observed by the District – New Years Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving (and Friday), and Christmas Day.

CHANGE ORDER: A written agreement of the parties after the Commencement Date to amend this Agreement so as to modify the Statement of Work or the Total Compensation or provide for an extension of time.

SUPPLIER: Supplier, its officers, employees, agents, successors, and assigns.

SUPPLIER's PROJECT MANAGER: The individual designated by the Supplier to be responsible for overall coordination, oversight, and management of the Work for Supplier.

INVITATION FOR BIDS: An advertised solicitation for sealed competitive Bids, with the title, date, and hour of the public opening designated. It includes a detailed description of the goods and/or services sought, the date for submittal of Bids, and all contractual terms and conditions.

PERSON: Any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or capacity, whether appointed by a court or others, and any combination of individuals.

STATEMENT OF WORK: The District's written directions, requirements and technical specifications for completing the Work. Standards for specifying materials or testing that are incorporated therein by reference shall have the same force and effect as if fully set forth therein.

SUBCONTRACTORS: Those persons having a direct contract with Supplier relating to performance of the Work, including one who furnishes material worked into a special design in accordance with the plans or specifications of the Work, but not including one who merely furnishes material.

TOTAL BID: The total cost to be paid to Supplier for completion of the Work.

TOTAL COMPENSATION: The total funds to be expended pursuant to this Agreement upon satisfactory completion of the Work.

WORK: All labor, materials, equipment, transportation, supporting documentation, and other products, services, or facilities necessary for complete performance of the Agreement.

18. ACCESS; WORK AREA; GATES

- (a) **Access.** The District will provide sufficient access to accomplish Work performed on District property. Supplier shall maintain all on-site roadways and paved and unpaved access roadways to and from the worksite in an acceptable and passable condition at no additional cost to the District, which shall, upon conclusion of the Work, be returned to their original condition. Land access to construction sites is restricted to the route designated by the District. Supplier is responsible for improvements and repairs to access routes required during construction. All access routes shall be used for the purpose of construction only. Supplier shall not disturb lands or waters outside the area of construction, except as may be found necessary and authorized by the District.
- (b) **Work Area.** All Work shall be confined to the designated work area(s). Supplier shall obtain written approval from the District before making any adjustments.
- (c) **Gates.** Supplier shall keep all gates to District lands or easements closed and locked in accordance with District specifications when not in use, and shall immediately notify the District when a gate has become impaired due to vandalism or other cause. Unless otherwise stated in the specifications, Supplier shall be responsible for providing lock(s) to District properties.

19. ASSIGNMENT AND SUBCONTRACTS

- (a) Supplier shall not sublet, assign, or transfer any Work involving more than 15% of the total cost of the Work, or assign any monies due hereunder, without the District's prior written consent. As soon as practicable after signing this Agreement, but not less than seven business days prior to the effective date of any subcontracts, Supplier shall notify the District's Project Manager in writing of the name of any subcontractor that has not been previously disclosed in the procurement process. Within five business days the District shall indicate its approval or disapproval, which shall not be unreasonably withheld. Failure to timely provide such approval or disapproval shall constitute approval. Neither District approval of a subcontractor nor any other provision of this Agreement creates a contractual relationship between any subcontractor and the District.
- (b) Supplier is responsible for fulfilling all work elements in any subcontracts and payment of all monies due. Supplier is fully responsible to the District for the acts and omissions of its subcontractors and persons directly or indirectly employed by them, and shall hold the District harmless from any liability or damages resulting from any subcontract to the extent allowed by law.

20. **AUDIT; ACCESS TO RECORDS.** Supplier must preserve its books and other records involving transactions related to this Agreement and provide the District, or its duly authorized representatives, access and necessary facilities to inspect and audit those records for five years after the receipt of

funds. If an examination or audit is performed, Supplier must continue to maintain all required records until such audit has been completed and all questions arising from it are resolved. Supplier shall refund any payment(s) that are found to not constitute allowable costs based upon an audit examination.

21. **CIVIL RIGHTS.** Pursuant to chapter 760, Fla. Stat., Supplier shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, pregnancy, or national origin, age, handicap, or marital status.
22. **CLEANUP; EQUIPMENT REMOVAL.** Upon expiration or termination of this Agreement, Supplier shall restore the worksite to its original condition, except for replacement of vegetation, unless otherwise required by this Agreement. Supplier shall remove from District property and all public and private property all machinery, equipment, supplies, surplus materials, temporary structures, rubbish, and waste materials resulting from its activities. After 20 days, the District may sell or dispose of any materials left at the worksite as it sees fit and deduct the cost of sale or disposal from any amounts due to Supplier. Any revenues obtained shall be applied toward costs incurred by the District, with excess revenues paid to Supplier.
23. **COOPERATION WITH THE INSPECTOR GENERAL, PURSUANT TO §20.055(5) FLA. STAT.** Supplier and any subcontractors understand and will comply with their duty, pursuant to §20.055(5), Fla. Stat., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.
24. **COORDINATION WITH THE DISTRICT AND OTHER DISTRICT CONTRACTORS**
 - (a) The District may let other contracts in connection with the Work. Wherever work done by the District or another District contractor is contiguous to Supplier's Work, the respective rights of the various interests shall be established by the District so as to secure completion of the Work. Supplier shall arrange its Work so as not to interfere with the District or other District contractors and join its Work to that of others in a proper manner, and in accordance with the intent of the Statement of Work. Supplier shall perform its Work in the proper sequence in relation to that of other District contractors, as may be directed by the District. Supplier shall afford other District contractors reasonable opportunity for introduction and storage of their materials and execution of their work, and shall properly conduct and coordinate its Work with theirs. Supplier shall take into account all contingent work to be done by others and shall not plead its want of knowledge of such contingent work as a basis for delay or non-performance. Supplier shall be liable for any damage it causes to the work performed by other District contractors.
 - (b) If any part of the Work depends for proper execution or results upon the work of other District contractors, Supplier shall inspect and promptly report any defects in the other contractors' work that render it unsuitable for Supplier's Work. Failure to so inspect and report shall constitute an acceptance of the other contractors' work as fit and proper for the reception of its Work, except as to defects which may develop in the other contractors' work after execution of the Work.
25. **CORRELATION AND INTENT OF DOCUMENTS; QUESTIONS OR ISSUES REGARDING PERFORMANCE OF THE WORK**
 - (a) This Agreement and all attachments are complementary. What is called for by one is as binding as if called for by all. The intent is to include all labor and materials, equipment, transportation, and incidentals necessary for the proper and complete execution of the Work. Materials or work described in words, which so applied have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

- (b) It is the District's intention to fully assist Supplier in the successful performance of the Work and to respond in a timely manner to questions or issues that arise. Supplier should discuss any questions or issues with the District's Project Manager and communicate such questions or issues in writing when required by this Agreement. The District shall respond through its Project Manager.

26. DISPUTE RESOLUTION

- (a) **During the course of work.** In the event any dispute arises during the course of the Work, Supplier shall fully perform the Work in accordance with the District's written instructions and may claim additional compensation. Supplier is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the District's Project Manager no later than 15 days after the precipitating event. If not resolved by the Project Manager within five business days, the Project Manager shall forward the request to the District's Office of General Counsel, which shall issue a written decision within 15 days of receipt. This determination shall constitute final action of the District and shall then be subject to judicial review upon completion of the Work. **Supplier shall proceed with the Work in accordance with said determination. This shall not waive Supplier's position regarding the matter in dispute.**
- (b) **Invoices.** In the event the District rejects an invoice as improper, and the Supplier declines to modify the invoice, the Supplier must notify the District in writing within ten days of receipt of notice of rejection that the Supplier will not modify the invoice and state the reason(s) therefor. Within five business days of receipt of such notice, if not informally resolved through discussion with the District Project Manager, the Project Manager shall forward the disputed invoice and the Supplier's written response to the District's Office of General Counsel. The matter shall then proceed as described in subsection (a), above.

27. **DIVERSITY REPORTING.** The District is committed to the opportunity for diversity in its procurement activities, and encourages its prime vendors (contractors and suppliers) to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as sub-contractors. The District will assist Supplier by sharing information on W/MBEs. Supplier shall provide with each invoice a report describing the company names for all W/MBEs, the type of minority, and the amount spent with each at all levels. The report will also denote if there were no W/MBE expenditures.

28. DUTY TO INSPECT AND REPORT DEFICIENCIES IN PLANS AND SPECIFICATIONS

- (a) For any Work that is dependent upon conditions at the worksite, Supplier's acceptance of contract award represents and warrants that Supplier has inspected and satisfied itself concerning the nature and location of the Work and general and local conditions, including, without limitation:
- (1) conditions affecting transportation, disposal, handling, and storage of materials;
 - (2) availability and quality of labor;
 - (3) availability and condition of roads;
 - (4) climatic conditions and seasons;
 - (5) hydrology of the terrain;
 - (6) topography and ground surface conditions;
 - (7) nature and quantity of surface materials to be encountered;
 - (8) equipment and facilities needed preliminary to and during the Work; and
 - (9) all other matters that can affect the Work and the cost thereof.
- Supplier's failure to acquaint itself with such conditions will not relieve it from its responsibility for properly estimating the time required or cost of performing the Work. Where the District has investigated subsurface conditions, this data may be provided to Supplier or is available upon request. Supplier must either seek clarification concerning the data or assume the responsibility for its interpretation.

- (b) If Supplier discovers hidden or subsurface conditions that differ materially from those normally expected or indicated in the technical specifications, Supplier shall immediately, and before such conditions are disturbed, notify the District in writing of: (1) subsurface or latent physical conditions differing materially from those indicated in the technical specifications, or (2) unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for herein. The District shall promptly investigate the conditions and determine whether they materially differ so as to cause an increase or decrease in Supplier's cost. Where the differing site conditions materially impact Supplier's cost, an equitable adjustment shall be made and the Agreement modified accordingly. No claim will be allowed if Supplier fails to provide the required notice.
- (c) If Supplier in the course of the Work finds any defect in the plans and specifications, including, but not limited to, any discrepancy between the drawings and the physical conditions at the worksite, or any errors or omissions in the drawings or in the layout, as given by points and instructions, it shall immediately inform the District in writing, which shall be promptly verified by the District. Any Work done after such discovery, until authorized, will be done at Supplier's risk as to cost overruns and modifications necessary to correct deficiencies in the Work. To ensure the proper execution of its subsequent Work, Supplier shall measure Work already in place or completed and shall immediately report any discrepancy between the executed Work and the drawings or other specifications.

29. FUEL COST ADJUSTMENTS

- (a) Supplier may request fuel cost adjustments no more than once per quarter if the cost of fuel changes, as determined by the fuel cost indices below, by more than 15%. For these purposes, quarters begin on October 1, January 1, April 1, and July 1. Fuel cost adjustments will be based on one or more of the following or upon mutual agreement, alternate equivalent indices; the Producer Price Index Commodity Data (PPI) for **Series Id:** WPU0571; Not Seasonally Adjusted; **Group:** Fuels and related products and power; **Item:** Gasoline; **Base Date:** 8200 and **Series Id:** WPU057303; Not Seasonally Adjusted; **Group:** Fuels and related products and power; **Item:** #2 Diesel fuel; **Base Date:** 8200: <http://data.bls.gov/PDQ/outside.jsp?survey=wp>.
- (b) To calculate an adjustment, take the Preliminary PPI at the time of the adjustment request minus the Preliminary PPI for the Reference Date (the initial Reference Date is the effective date of the contract, subsequently, the date of the most recent adjustment) divided by the Preliminary PPI for the Reference Date, multiplied by the Fuel Cost Percentage (initially, the percentage of cost attributed to fuel on the effective date of the contract; subsequently, the adjusted percentage of cost attributed to fuel based on the most recent adjusted costs), multiplied by the total cost (initially, the total cost on the Effective Date of the contract; subsequently, the most recent adjusted total cost).
- (c) Requests for adjustment shall be submitted to the Project Manager and shall include the data and calculations used to determine the adjustment. The fuel adjustment, if approved, will be effective as of the date the District receives a request that complies with the above.
- (d) The District may impose a fuel cost adjustment based on the above calculations. Such adjustment shall be effective as of the date Supplier receives notice of the adjustment, including the data and calculations used to determine the adjustment. The District reserves the right to withhold an amount reflecting a properly imposed District fuel cost adjustment from payment of any invoice for work performed after the effective date of the adjustment that fails to accurately reflect the adjustment.

30. **GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL.** This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Orange County; (2) each party shall bear its own attorney's fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.
31. **INTEREST IN THE BUSINESS OF CONTRACTOR; NON-LOBBYING.** Supplier certifies that no officer, agent, or employee of the District has any material interest, as defined in chapter 112, Fla. Stat., either directly or indirectly, in the business of Supplier to be conducted under this Agreement, and that no such person shall have any such interest at any time during the term of this Agreement. Pursuant to §216.347, Fla. Stat., monies received from the District pursuant to this Agreement shall not be used to lobby the Florida Legislature or any other state agency.
32. **INDEPENDENT CONTRACTOR.** Supplier is an independent contractor. Neither Supplier nor Supplier's employees are employees or agents of the District. Supplier controls and directs the means and methods by which the Work is accomplished. Supplier is solely responsible for compliance with all labor and tax laws pertaining to it, its officers, agents, and employees, and shall indemnify and hold the District harmless from any failure to comply with such laws. Supplier's duties include, but not be limited to: (1) providing Workers' Compensation coverage for employees as required by law; (2) hiring employees or subcontractors necessary to perform the Work; (3) providing any and all employment benefits, including, but not limited to, annual leave, sick leave, paid holidays, health insurance, retirement benefits, and disability insurance; (4) payment of all federal, state and local taxes, income or employment taxes, and, if Contractor is not a corporation, self-employment (Social Security) taxes; (5) compliance with the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., including payment of overtime as required by said Act; (6) compliance with the Patient Protection and Affordable Care Act 42 U.S.C. §§ 18001, et seq.; and (7) providing employee training, office or other facilities, equipment and materials for all functions necessary to perform the Work. In the event the District provides training, equipment, materials, or facilities to meet specific District needs or otherwise facilitate performance of the Work, this shall not affect Supplier's duties hereunder or alter Supplier's status as an independent contractor. This paragraph does not create an affirmative obligation to provide any employee benefits not required by law.
33. **LAND AND WATER RESOURCES.** Supplier shall not discharge or permit the discharge, directly or indirectly, of any fuels, oils, calcium chloride, acids, insecticides, herbicides, wastes, toxic or hazardous substances, or other pollutants or harmful materials, onto any lands or into any surface or ground waters, including, but not limited to, streams, lakes, rivers, canals, ditches, or reservoirs. Supplier shall investigate and comply with all applicable federal, state, county, and municipal laws concerning toxic wastes, hazardous substances, and pollution of surface and ground waters. If any waste, toxic or hazardous substance, or other material that can cause pollution, as defined in §403.031, Fla. Stat., is dumped or spilled in unauthorized areas, Supplier shall notify the District thereof within one workday and thereafter shall remove the material and restore the area to its original condition. If necessary, contaminated ground shall be excavated and disposed of as directed by the District and replaced with suitable fill material, compacted and finished with topsoil, and planted as required to re-establish vegetation. All cleanup and disposal costs shall be borne by Supplier.
34. **LIENS.** Neither final payment nor payment of any part of the retainage shall become due until Supplier delivers to the District releases of all labor and material cost liens arising from Supplier's performance of the Work, including Supplier and any subcontractor(s), and an affidavit by Supplier stating that the releases and receipts include all labor and material costs for which a lien could be

filed. If any subcontractor refuses to furnish Supplier a release or a receipt in full, Supplier may furnish to the District a bond satisfactory to the District, indemnifying the District against any such potential lien. If any lien or potential lien remains unsatisfied, the District may discharge the same forthwith and deduct the cost thereof from any amounts due to Supplier. In the event Supplier has been fully paid or the amount of such lien exceeds the amount due to Supplier, Supplier shall refund to the District all monies that the District paid in discharging such lien, including all costs and a reasonable attorney's fee. The discharging of such a lien by the District shall not constitute a waiver of any claims of defenses that Supplier may have against the lienor.

35. **NUISANCE.** Supplier shall exercise every reasonable means to avoid creating or continuing a public or private nuisance resulting from the Work, including, but not limited to: (1) excessive noise associated with radio or other forms of electronic entertainment for persons at the worksite; (2) dust from construction operations, and (3) the uncontrolled flow of surface waters.
36. **PERMITS AND LICENSES; COMPLIANCE WITH LAW.** Supplier shall comply with all applicable federal, state and local laws and regulations, including those pertaining to health and safety. All materials used and work performed must conform to the laws of the United States, the state of Florida and county and municipal ordinances. Supplier represents and warrants that it is duly licensed to perform the Work in accordance with the laws of the state of Florida and the county or municipality in which the Work is to be performed. Unless otherwise specifically provided for herein, Supplier shall give to the proper authorities all required notices relative to the Work in its charge; obtain and pay for all official permits or any other licenses, including any and all professional licenses required by the nature of the Work; and furnish any bonds, security, or deposits required to permit performance of the Work. Supplier is responsible for the resolution of any issues resulting from a finding of noncompliance by any regulatory agencies, due to the Supplier's failure to comply with applicable regulatory requirements, including all costs for delays, litigation, fines, or other costs.
37. **PETROLEUM STORAGE TANKS.** Any petroleum storage tanks with a capacity of 55 gallons or greater that Supplier brings onto District property must be either double-walled or kept within secondary containment that will contain 110% of the tank volume.

38. **PUBLIC RECORDS**

- (a) Supplier is responsible for identifying confidential trade secret information as such upon submittal to the District. Notwithstanding any other provision hereof, the District shall not be liable to Supplier for release of confidential information not identified as such upon submittal. If the District receives a public records request that requests information claimed to be confidential by Supplier, the District shall take such steps as are necessary to comply with chapter 119, Fla. Stat., while protecting the confidentiality of trade secret information. In the event of a dispute as to whether the requested information is a trade secret, Supplier shall be liable for all costs incurred by the District resulting from the dispute, including any court costs and attorney's fees. The calculation of those costs shall not include costs that are charged to the public records requestor.
- (b) Supplier shall comply with Florida Public Records law under Chapter 119, Fla. Stat. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in §119.011(12), Fla. Stat. Supplier shall keep and maintain public records required by the District to perform the services under this Agreement.
- (c) If Supplier meets the definition of "Contractor" found in §119.0701(1)(a), Fla. Stat.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

- (i) Pursuant to §119.0701, Fla. Stat., a request to inspect or copy public records relating to this Agreement for services must be made directly to the District. If the District does not possess the requested records, the District shall immediately notify the Supplier of the request, and the Supplier must provide the records to the District or allow the records to be inspected or copied within a reasonable time. If Supplier fails to provide the public records to the District within a reasonable time, the Supplier may be subject to penalties under s. 119.10, Fla. Stat.
- (ii) Upon request from the District's custodian of public records, Supplier shall provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law.
- (iii) Supplier shall identify and ensure that all 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 Supplier does not transfer the records to the District.
- (iv) Upon completion of the Agreement, Supplier shall transfer, at no cost to District, all public records in possession of Supplier or keep and maintain public records required by the District to perform the services under this Agreement. If the Supplier transfers all public records to the District upon completion of the Agreement, the Supplier shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Supplier keeps and maintains public records upon completion of the Agreement, the Supplier shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is accessible by and compatible with the information technology systems of the District.

(d) IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE DISTRICT'S CUSTODIAN OF PUBLIC RECORDS AT:

**District Clerk
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177-2571
(386) 329-4127
clerk@sjrwmd.com**

39. **RELEASE OF INFORMATION.** Supplier shall not publish or release any information related to performance of this Agreement, or prepare, publish, or release any news or press release in any way related to this Agreement, without prior District review and written consent.

40. REMEDIES FOR NON-PERFORMANCE

- (a) **District Remedies.** The remedies enumerated herein are non-exclusive. In addition to the remedies set forth below, the District may avail itself of any statutory and/or common law remedies not set forth herein. In the event of a breach, the District may terminate this Agreement

for cause. Alternatively, the District may allow Supplier to correct the deficiency, or may take such action as is necessary to correct such deficiency through District action or that of a third party. Delay or failure by the District to enforce any right or remedy hereunder shall not impair, or be deemed a waiver of, any such right or remedy, or impair the District's rights or remedies for any subsequent breach of this Agreement.

- (b) **Supplier Correction of Deficiencies.** The District shall provide Supplier with written notice of deficiency. At the District's sole judgment and discretion, the District may afford an opportunity to correct said deficiency, in which event the notice shall specify the time allowed to cure. If Supplier disputes that a failure of performance has occurred, Supplier shall, nevertheless, perform the corrective action and may submit a request for a Change Order subject to the dispute resolution procedure. Unless authorized through a Change Order, the Completion Date shall not be extended in order to correct deficiencies. Supplier shall bear the cost of correcting all work of other contractors that is destroyed, damaged, or otherwise negatively impacted by its corrective action. Failure to take timely corrective action may result in termination for cause or the District pursuing alternative remedies, as provided herein.
- (c) **Alternative Remedies to Correct Deficiency.** If the District determines that it is not in its best interest for Supplier to correct incomplete or damaged Work caused by Supplier's failure of performance, the District may pursue any or all of the following remedies, in whole or in part: (1) accept the Work as is and deduct the reasonable value of the deficient Work from the Total Compensation; (2) complete the Work through the utilization of District employees and deduct the cost thereof from the Total Compensation; (3) contract with a third party to complete the deficient Work and deduct the cost thereof from the Total Compensation.
- (d) **District Technical Assistance.** The District may elect to provide technical assistance to Supplier in order to complete satisfactory performance of the Work. If the District is performing a function that Supplier is required to perform, the District may deduct the cost of providing such technical assistance from the Total Compensation. Prior to providing any such technical assistance, the District shall notify Supplier that it considers such assistance to be above and beyond its duties under this Agreement and that it intends to deduct the cost of providing such assistance from the Total Compensation. Supplier shall not be entitled to reject technical assistance when the District determines that such assistance is necessary to complete the Work.

41. **ROYALTIES AND PATENTS.** Supplier certifies that, to the best of its information and belief, the Work does not infringe on any patent rights. Unless provided otherwise herein, Supplier shall: (1) pay all royalties, patent, and license fees necessary for the Work; (2) defend all suits or claims for infringement of any patent rights, and (3) save and hold the District harmless from loss on account thereof; provided, however, that the District shall be responsible for any such losses when the utilization of a particular process or product of a particular manufacturer is specified by the District. If Supplier obtains information that the process or article so specified is a patent infringement, it shall be responsible for such loss unless it promptly so notifies the District.
42. **SAFETY.** For any Work that is to be performed on premises that are owned or controlled by the District (the Premises), Supplier has the sole and exclusive duty for the safety of the premises. Supplier shall provide and maintain sufficient protection for the safety of its employees and other persons who may utilize the Premises, and prevent damage to District property, materials, and equipment. Supplier shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the work assigned. Neither Supplier nor its subcontractors shall allow or cause to be allowed any hunting or any weapons, animals, alcohol, or drugs, on or from the Premises or adjacent property. Supplier employees shall not park their vehicles or store equipment or materials adjacent to roads where it may be a hazard to traffic. A

clear distance of at least 30 feet from the edge of the pavement or right-of-way shall be kept free of any obstacles unless otherwise authorized by the District. Supplier shall ensure that only authorized personnel are allowed on the worksite and shall post notices warning both employees and the public of all safety hazards created by Supplier.

43. **SCRUTINIZED COMPANIES.** Supplier certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to §287.135, Fla. Stat., the District may terminate this Agreement at its sole option if the Supplier is found to have submitted a false certification; or if the Contractor is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
44. **USE OF COMPLETED PORTIONS OF THE WORK.** The District shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the fact that the time for completing the entire Work or such portions may not have expired. Such taking of possession and use will not be deemed an acceptance of any Work not completed. If such possession and use increases the cost of or delays the Work, Supplier shall be entitled to a Change Order for extra compensation, or extension of time, as necessary, to offset the effect of such prior possession and use.
45. **WARRANTY**
- (a) Supplier warrants that the Work, workmanship and material furnished by Supplier shall be new and of specified quality, shall conform to the requirements of this Agreement, shall be free from defects, and shall be free from any security interest, lien, or other encumbrances. This warranty shall remain in effect for a period of 12 months after completion of the Work, unless otherwise specified herein. Any defective Work, workmanship, or material corrected during the warranty period shall be similarly warranted for 12 months following its correction or for such other period as specified herein. The express warranty set forth herein shall not be exclusive and shall not act as a limitation upon any statutory or other warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose.
- (b) In the event of breach of this warranty, Supplier shall take the necessary actions to correct the breach in the most expedient manner as dictated by then-existing circumstances. All costs incidental to the repair, replacement, redesign, and testing incurred as a result thereof, including the removal, replacement, and reinstallation of equipment in place when the Work was started, shall be Supplier's responsibility. Upon written notification of a breach, Supplier shall promptly send the necessary personnel to the project site to assume responsibility for corrective action. Time is of the essence. Supplier shall be afforded necessary and reasonable access to perform warranty work. If Supplier fails to promptly correct the breach, the District may take corrective action without waiving any other rights or remedies it may have, and Supplier shall reimburse the District for all expenses reasonably incurred in performing such corrective action.
46. **WORK SCHEDULE.** For construction or other services upon District property, no Work shall be accomplished on official holidays or weekends unless approved in advance by the District Project Manager. Unless otherwise approved by the District Project Manager, Supplier's work hours on District property shall not commence before 7:00 a.m. and shall conclude on or before 6:00 p.m. All requests to change the schedule shall be coordinated with the District a minimum of 24 hours in advance of the change and confirmed in writing.

IN WITNESS WHEREOF, the St. Johns River Water Management District has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, or duly authorized designee, and Supplier has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

SUPPLIER

By: _____
Michael A. Register, P.E., Executive Director, or designee

By: _____

Typed Name and Title

Date: _____

Date: _____

Attest: _____

Typed Name and Title

- Attachments:
Attachment A — Statement of Work/Technical Specifications
Attachment B — Insurance Requirements
Attachment C — District’s Supplemental Instructions (sample)

**ATTACHMENT A — STATEMENT OF WORK
ALUMINUM SULFATE PURCHASE AND DELIVERY**

I. INTRODUCTION/BACKGROUND

The District treats most discharges of water from District lands to Lake Apopka and the Upper Ocklawaha River Basin (UORB) with liquid aluminum sulfate (alum) to minimize nutrient loading. Discharges are necessary to maintain some areas dry and other areas at desirable levels for emergent marsh vegetation. In addition, discharges are necessary for some maintenance activities. Areas where alum has been used in the past includes the Lake Apopka North Shore Restoration Area (NSRA), the Emeralda Marsh Conservation Area (EMCA) and the Sunnyhill Restoration Area. These areas are expected to be the continued source of discharges for several more years.

II. OBJECTIVE

Objective is to obtain a source of commercial quality alum at the best price to supply the District's needs, with the ultimate objective of improving water quality in District restoration areas prior to discharge to other water bodies.

III. SCOPE OF WORK

Contractor shall deliver liquid aluminum sulfate on an "as needed" basis to project sites listed below for use in various treatment projects to capture and settle phosphorous prior to discharge of pumped waters to surface water bodies.

IV. TASK IDENTIFICATION

Contractor shall provide liquid aluminum sulfate (17% Al₂O₃ dry basis), commercial quality, that meets or exceeds ANSI/AWWA Standard B403-09, and deliver in liquid bulk, chemical tank truck loads (approximately 4,500 gal. wet, 12-13 tons dry). The delivery tankers shall provide and carry at least 100 ft. of hose adaptable to the District's stations that are equipped with a 2" male camlock couplings. If dedicated alum tanker trucks are not available, the tankers must be cleaned to minimize contaminants in the liquid alum, which shall meet or exceed the above referenced alum standard. Contractor shall provide tanker cleanout records upon the District's request. The District may perform checks of the alum from time to time to ensure the quality.

DELIVERY LOCATIONS:

Lake Apopka North Shore Restoration Area

- Zellwood Unit 1 (on-site tank size 15,000 gallons) - 3151 Laughlin Road Zellwood, Fl 32703
- Zellwood Unit 2 (on-site tank size 12,000 gallons) - 2634 Lust Road Apopka, Fl 32703
- Duda –(on-site tank size 15,000 gallons) –24704 CR 448A Mount Dora, Fl 32757

Emeralda Marsh Conservation Area

- Emeralda Island Road Pump (on site tank size 12,000-gallons) 3800 Emeralda Island Rd., Leesburg, FL 32788

Sunny Hill Restoration Area

- Sunnyhill Restoration Area (on-site tank size 8,000 gallons) – (no electric service); the field office is 3.2 miles to the south at 19561 SE Highway 42, Umatilla, FL 32784-7814

NOTE: None of the sites have an actual physical address; however, the addresses above can be used as a guide for mileage purposes. Delivery appointments are not necessary. Generally, the sites are not manned and a District representative may not be available to meet the contractor on-site. The Contractor will receive instructions for property access and maps to the exact location of tanks on property. A District contact phone number will be provided to the Contractor in the event of problems during a delivery.

NOTE: The District may have need for additional alum to be delivered to other sites within ten miles of the sites listed above. The Contractor shall provide alum to these sites at the same price as the other sites.

NOTE: Multiple tankers may be ordered per day for delivery to multiple site locations depending on project needs and rainfall.

V. TIME FRAMES & DELIVERABLES

The Contractor shall stock sufficient quantities of liquid aluminum sulfate to meet District requirements on an "as-needed" basis within 48 hours after being notified of specific project requirements by the District. Delivery to the District shall be within the hours of 8:00 A.M. - 5:00 P.M., seven days a week, holidays excluded, unless otherwise specified. Orders will be placed during the District's normal business hours, 8:00 AM to 5 PM, Monday through Friday.

VI. CONTRACT BUDGET

The District agrees to pay a fixed rate of \$_____ per dry ton weight of alum for a maximum not to exceed of \$525,000 over a three-year period from the date of Contract Effective date.

DISTRICT PROJECT MANAGER

Rayford McCain, Program Manager
 Cell: (321) 212-9329
 Email: rmccain@sjrwmd.com

ATTACHMENT B — INSURANCE REQUIREMENTS

Vendor shall acquire and maintain until completion of the Work the insurance coverage listed below, which constitutes primary coverage. Supplier shall not commence the Work until the District receives and approves Certificates of Insurance documenting required coverage. Supplier's General Liability policy shall include Endorsement CG 20 10 04 13, or equivalent, naming the St. Johns River Water Management District (the "District") as Additional Insured. All required policies shall include: (1) endorsement that waives any right of subrogation (Endorsement CG 24 04 05 09, or equivalent) against the District for any policy of insurance provided under this requirement or under any state or federal worker's compensation or employer's liability act; (2) endorsement to give the District no less than 30 days' notice in the event of cancellation or material change. Certificates of Insurance must be accompanied by copies of the requested endorsements.

Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the District. Approval will not be unreasonably withheld. Supplier is responsible for any deductible or self-insured retention. Insurance must be placed with insurers having an A.M. Best rating of A-V or greater. District receipt of insurance certificates providing less than the required coverage does not waive these insurance requirements.

- (a) **Workers' Compensation Insurance.** Workers' compensation and employer's liability coverage, including maritime workers' compensation, if applicable, in not less than the minimum limits required by Florida law. If Supplier claims an exemption from workers' compensation coverage, Supplier must provide a copy of the Certificate of Exemption from the Florida Division of Workers' Compensation for all officers or members of an LLC claiming exemption who will be participating in the Work. In addition, Supplier must provide a completed District "Affidavit (Non-Construction)" for non-construction contracts.
- (b) **General Liability.** Commercial General Liability Insurance on an "Occurrence Basis," with limits of liability for each occurrence of not less than \$1,000,000 for personal injury, bodily injury, and property damage, with a(n) project aggregate of \$2,000,000. Coverage shall include: (1) contractual liability, (2) products and completed operations, (3) independent contractors, and (4) property in the care, control, or custody of the Supplier. Extensions shall be added or exclusions deleted to provide the necessary coverage.
- (c) **Automobile Liability.** \$500,000 combined single limit.

ATTACHMENT C — DISTRICT’S SUPPLEMENTAL INSTRUCTIONS (sample)

DISTRICT SUPPLEMENTAL INSTRUCTIONS #

DATE:

TO: _____

, _____

FROM: Rayford McCain, Project Manager

CONTRACT NUMBER: 37933

CONTRACT TITLE: Purchase and Delivery of Liquid Aluminum Sulfate

The Work shall be carried out in accordance with the following supplemental instruction issued in accordance with the Contract Documents without change in the Contract Sum or Contract Time. Prior to proceeding in accordance with these instructions, indicate your acceptance of these instructions for minor adjustments to the work as consistent with the Contract Documents and return to the District’s Project Manager.

1. SUPPLIER’S SUPPLEMENTAL INSTRUCTIONS:
2. DESCRIPTION OF WORK TO BE CHANGED:
3. DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS: .

Supplier’s approval: (choose one of the items below):

Approved: _____ Date: _____

(It is agreed that these instructions shall not result in a change in the Total Compensation or the Completion Date.)

Approved: _____ Date: _____

(Supplier agrees to implement the Supplemental Instructions as requested but reserves the right to seek a Change Order in accordance with the requirements of the Agreement.)

Approved: _____ Date: _____
Rayford McCain, District Project Manager

Acknowledged: _____ Date: _____
Amy Lucey, District Senior Procurement Specialist

c: Contract file
Financial Services