

COMMODITIES PURCHASE CONTRACT

Contract No. 2025-39

This Contract is made and entered into this ____ day of _____, 20__ by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City") and Environmental Operating Solutions, Inc., a Massachusetts C Corporation with principal address at 53 Portside Drive, Pocasset, MA 02559 ("Contractor").

WHEREAS, the City seeks a Contractor willing to sell it the commodity or commodities identified in the Commodity and Price List attached hereto as Exhibit A (the "Commodities"); and

WHEREAS, the Contractor is willing to sell the City the Commodities for the prices identified in the Commodity and Price List.

NOW THEREFORE, in consideration for the mutual promises herein, the Parties agree as follows:

1. General Description: **Water and Wastewater Treatment Chemicals**
2. Term and Renewal.
 - 2.1 Contract Term: The term is for a period of five (5) years unless terminated pursuant to the provisions of the Contract. The Contract will be effective as of the date signed by both parties. The City Council shall have the authorize to amend the contract term.
 - 2.2 Renewal: The Contract may be renewed or extended for up to two (2), one (1) year additional terms by mutual written consent of the parties. The City Manager their designee (the Purchasing Director) shall have authority to approve renewal on behalf of the City.
 - 2.3 Unilateral Extension: The Contract may be unilaterally extended by the City for one (1) 90-day period. The City Manager or their designee (the Purchasing Director) shall have the authority to approve the unilateral extension on behalf of the City. Contractor will be provided written notice of the Unilateral Extension prior to expiration of the Contract.
3. Commodities & Purchase Price.
 - 3.1 Price: During the term of this Contract, in an amount not to exceed (NTE) **one million five hundred thousand dollars and no cents (\$1,500,000.00), annually for the contract term** Contractor shall, in the quantities set forth in any purchase order that the City may submit to the Contractor under this Contract, sell to the City the Commodities at the prices stated in the Commodity and Price List attached hereto as *Exhibit A* and as identified in the Scope of Work attached hereto as *Exhibit B*. Unless otherwise stated in the Commodity and Price List, the City shall pay all taxes applicable to any purchase it makes under this Contract.
 - 3.2 Multiple Contracts: The City reserves the right to enter into multiple contracts as deemed in the best interest of the City. The not-to-exceed amount is the maximum amount and may be divided over multiple contracts, and The City does not guarantee a minimum number of orders with any particular Contractor.
 - 3.3 Price Adjustments: Price adjustments may be negotiated at the discretion of the City, annually, at the anniversary of the execution date of the Contract. Any request for a price increase must include supporting documentation demonstrating that the increase in contract price is based on an increased cost to the Contractor and that the proposed pricing is still competitive in the marketplace.

3.4 Formal Amendment Required: Any price adjustment must be approved by mutual written consent of the parties through a formal amendment. The City Manager or his/her designee (the Purchasing Director) may approve an amendment if the total amount of the Contract, as amended, is less than \$100,000; otherwise, City Council approval is required.

4. Invoicing and Payment after Delivery.

4.1 Payment: Unless otherwise stated in the Commodity and Price List, payment for the Commodities is due within thirty (30) days of the date of the Contractor's delivery of Commodities conforming to the Contract and receipt of the Contractor's invoice, whichever is later.

4.2 Invoice: Contractor should invoice the City by an itemized list of charges. The City's Purchase Order Number and/or the Contract Number should be referenced on each invoice.

5. Commodities.

5.1 Quality: Contractor warrants that all Commodities supplied under the Contract will be new and free from defects in material or workmanship. The Commodities will conform to any statements made on the containers or labels or advertisements for the Commodities and will be safe and appropriate for use as normally used. The City's inspection, testing, acceptance, or use of Commodities shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.

5.2 Continuity of Service: In the unforeseen event that due to supply disruptions or other factors, Contractor cannot deliver the Commodities pursuant to the terms of the Contract, Contractor shall make all **reasonable** efforts to ensure continuity of service. Contractor shall promptly notify the City upon identifying potential shortages and shall collaborate with the City to minimize disruptions in service, including, but not limited to, identifying alternative vendors to continue delivery of the Commodities under the same terms and conditions of this Contract.

5.3 Manufacturer's Warranties: Contractor shall deliver all Manufacturer's Warranties to the City upon the City's acceptance of the Commodities.

5.4 Delivery:

5.4.1 Contractor shall deliver the Commodities FOB destination to the City's receiving address as set forth in the relevant purchase order under the Contract. All transportation and handling charges shall be paid by the Contractor, unless the Parties agree otherwise in a writing signed by the Parties. Risk of loss of the Commodities will pass to the City upon Contractor's delivery of Commodities conforming to the Contract pursuant to a purchase order from the City under this Contract.

5.4.2 Contractor shall take all reasonable measures to ensure that any Commodities purchased under this Contract shall be delivered within thirty (30) days of the City's issuance of the relevant purchase order unless the Parties agree otherwise in writing. Contractor will not be liable for delays in performance or for non-performance due to unforeseen circumstances or causes beyond the Contractor's reasonable control.

5.5 Default in One Installment to Constitute Total Breach: Contractor may not substitute nonconforming Commodities. Delivery of nonconforming Commodities, or a default of any nature, shall constitute a breach of the Contract as a whole.

6. Termination & Cancellation Clauses.

- 6.1 Non-Appropriation. The City may terminate all or a portion of the Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to the City or Contractor.
- 6.2 For Convenience: The City may terminate the Contract for any reason by giving the Contractor written notice of such termination no less than sixty (60) days prior to the date of termination. If the Contract is so terminated, the City's only payment obligation under the Contract shall be for those commodities ordered prior to the effective date of the termination.
- 6.3 For Cause: The City may cancel the Contract for cause when the Contractor fails to perform its obligations by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the City will advise the Contractor in writing of the reasons why the City is considering cancelling the Contract and may provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. The Parties may endeavor to agree to reasonable modifications in the Contract to accommodate the causes of the cancellation for cause and avoid the cancellation, to the extent permitted by law, and at the discretion of each Party individually.
- 6.4 Gratuities: The City may cancel the Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with award or performance of the Contract.
- 6.5 Conflict of Interest: Pursuant to A.R.S. § 38-511, if the City identifies a conflict of interest in the award or performance of the Contract, the City may cancel the Contract within three (3) years after its execution, without penalty or further liability to Contractor.

7. Governing Law and Venue, Attorneys' Fees, Public Records, and Inspection.

- 7.1 Governing Law and Venue: The Contract shall be governed by and construed in accordance with the Laws of the State of Arizona. In the event of litigation, exclusive venue arising under this Contract is Coconino County, Arizona.
- 7.2 Attorneys' Fees: If any action at law or in equity is necessary to enforce the terms of the Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees, and expenses.
- 7.3 Public Records: The Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law. A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as "confidential," the City will endeavor to notify Contractor prior to release of such information.
- 7.4 Inspection: The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.

8. RESERVED.

9. Compliance with Laws: Contractor shall comply with all applicable federal, state, and local laws, regulations, standards, codes, and ordinances, including acquiring the requisite insurance, licenses, permits, and approvals, required to perform the Contract, and provide copies to City upon request.

10. Indemnity: Contractor shall be fully liable for the actions of its agents, employees, partners, and assigns and shall fully indemnify, defend, and hold harmless the City, and their officers, agents, and employees from third party suits, actions, damages, and costs of every name and description, including attorneys' fees to the extent arising from or relating to personal injury and damage to real or personal property, caused in whole or in part by the negligence or willful misconduct of Contractor, its agents, employees, partners, or assigns. This indemnification shall survive termination or expiration of the Contract.
11. Assignment/Subcontracting: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the City.
12. Amendments: The terms of this Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever without written approval of both parties through a formal written amendment. A "change order" is not a sufficient mechanism for amending the Contract.
13. Nondiscrimination: Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, and/or familial status and represents and warrants that it complies with all applicable federal, state, and local laws, ordinances and executive orders regarding employment.
14. Immigration Laws: Pursuant to A.R.S. § 41-4401, Contractor hereby warrants that it and each of its subcontractors shall comply with all state and federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A breach of state and/or federal immigration laws and regulations shall constitute a material breach of the Contract. Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contract if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by A.R.S. § 23-214(A).
15. No Boycott of Israel: Pursuant to A.R.S. §§ 35-393 and 35-393.01, if Contractor has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars (\$100,000), Contractor hereby certifies that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.
16. Forced Labor of Ethnic Uyghurs: Contractor hereby certifies that it does not use the forced labor of ethnic Uyghurs in the People's Republic of China as defined in A.R.S. § 35-394, et seq.
17. Notice: Any formal notice required under the Contract shall be in writing and sent by certified mail and email as follows:

To the City (Wastewater):
 Cory Mueller
 Water Services Supervisor
 City of Flagstaff
 211 W. Aspen Ave.
 Flagstaff, AZ 86001
 Email: cmueller@flagstaffaz.gov
 Phone: (928) 526-2422

To Contractor:
 Samuel Ledwell
 President
 Environmental Operating Solutions, Inc.
 53 Portside Drive
 Pocasset, MA 02559
Samuel.ledwell@microc.com

To the City (Water Treatment):
Brian Huntzinger
Water Production Manager
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Email: bhuntzinger@flagstaffaz.gov
Phone: (928) 774-0262

To the City (Water Treatment):
Lee Williams
Water Services Section Director
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Email: lwilliams@flagstaffaz.gov
Phone: (928) 213-2476

With a copy to:
Teddy Callan
Procurement Specialist
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Email: teddy.callan@flagstaffaz.gov

18. Authority: Each Party warrants that it has authority to enter into the Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into the Contract.

ENVIRONMENTAL OPERATING
SOLUTIONS, INC.

CITY OF FLAGSTAFF

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney's Office

Notice to Proceed issued: _____, 20__

Last Updated August 28, 2024

EXHIBIT A - COMMODITY AND PRICE LIST

Unit Price

Chlorine, 150 lb. cylinders

Wastewater/Wildcat plant and Water/Lake Mary plant

Price per (cylinder)	no bid
Price per (lb.)	no bid
Freight	no bid
Total Bid Price per Pallet (16)	no bid
150 lb. cylinder Deposit	no bid
**Additional small load charges	no bid
Delivery is 5 days after receipt of order (ARO)	
Can you meet this delivery time? (Y/N)	

Chlorine, 2,000 lb. cylinders

Wastewater/Wildcat plant and Water/Lake Mary plant

Price per (cylinder)	no bid
Price per (lb.)	no bid
Freight	no bid
Total Bid Price per cylinder	no bid
2,000 lb. cylinder Deposit	no bid
**Additional small load charges	no bid
Delivery is 5 days after receipt of order (ARO)	
Can you meet this delivery time? (Y/N)	

Liquid Cationic Polymer (wastewater solids treatment)(20% active)

Wastewater/Wildcat plant

Price per Pound (Disc Thickener solids)	no bid
Price per Pound (Geo Bag solids)	no bid
Freight	no bid
Total Bid Price per Tote (Disc Thickener)	no bid
Delivery of polymer after receipt of order (ARO) is:	

Liquid Cationic Polymer (wastewater treatment)(20% active)

Wastewater/Wildcat plant

Price per Pound (Geo Bag)	no bid
Freight	no bid
Total Bid Price per Tote (Geo Bag)	no bid
Delivery of polymer after receipt of order (ARO) is:	

Sodium Bisulfite 40%, 300 gal. tote

Wastewater/Wildcat plant

Price per (Tote)	no bid
Freight	no bid
Total Bid Price	no bid
Tote deposit	no bid
**Additional small load charges	no bid
Delivery of Bisulfite after receipt of order (ARO) is:	

Sodium Bisulfite 40%, Bulk/Gal.

Wastewater/Wildcat plant

Price per (Gal.)	no bid
Freight	no bid
Tax	no bid
Total Bid Price	no bid
**Additional small load charges	no bid
Delivery of Bisulfite after receipt of order (ARO) is:	

12.5% Sodium Hypochlorite (liquid bleach)

Wastewater/Rio plant

Price per lb./gal.	no bid
Freight	no bid
Total Bid per load	no bid
**Additional small load charges	no bid

Sodium Hydroxide (25%)

Water/Lake Mary plant

Price per lb.	no bid
Freight	no bid
Total Bid per load (4500 gal.)	no bid
**Additional small load charges	no bid

Natural/Organic Carbon Source

Wastewater/Wildcat plant

Price per gallon	4.15
Freight	0
Total Bid per load (4500 gal.)	4.15
**Additional small load charges	n/a

Miscellaneous charges

*If miscellaneous charges apply, please state what item number they apply to, and what the charges are for. In addition, if you will be charging a delivery fee/freight fee/fuel fee, please include that information here. (All charges must be included, no extra charges will be considered at a later date. Miscellaneous charges will be considered in determining the low Bid)

"A 30-day notification is requested (required) for any price changes during the contract period."

EXHIBIT B – SCOPE OF WORK

WATER AND WASTEWATER TREATMENT CHEMICALS SPECIFICATIONS/REQUIREMENTS

Compliance:

Contractor must disclose the intent to provide any chemicals or chemical raw materials that will be supplied through this Contract that originate in a country other than the United States. Preference has been given to those manufactured or mined in the United States. Contractor shall notify the City of Flagstaff (“City”) Wastewater Treatment Manager and the Water Production Manager prior to shipment of any country of origin changes in order to obtain prior approval. Contractor will be required to certify that each shipment meets the requirements stated above by lot or batch number and provide test or inspection results if requested.

Tanker trucks used to transport chemicals that are not dedicated for the specific chemical must have documentation that only chemicals meeting ANSI/NSF Standard 60 have been transported in the tanker. In addition, Quality Assurance/Quality Control cleaning and inspection documentation must be presented with each delivery on a non-dedicated tanker. This documentation must be available for inspection upon delivery and will be reviewed by City personnel for compliance before acceptance of delivery. Washing and inspection procedures for non-dedicated tankers must be supplied as part of the response to this bid. The City reserves the right to draw random samples for testing by an independent laboratory experienced in this type of testing.

SHOULD ANY BATCH TESTED NOT BE IN COMPLIANCE WITH AMERICAN WATERWORKS ASSOCIATION (AWWA) SPECIFICATIONS AND STANDARDS, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE FOLLOWING:

1. Replace all unused portions of the non-compliant shipment without cost to the City, including delivery charges.
2. Reimburse the City for the cost of all quantities consumed prior to replacement.
3. In the event of damage or contamination to the water treatment equipment, reimburse the City for the cost to replace parts damaged or contaminated as a result of the non-compliant product, including the burdened labor rate for all worker hours required to correct the damage.

CHEMICAL SPECIFICATIONS AND DELIVERY REQUIREMENTS:

1. Chlorine:

- 1.1 Form: Gas, approximately 100% chlorine.
- 1.2 How Shipped: 150-pound cylinders & 1 Ton (2000 lb.) Containers. Must have lift gate for cylinders.
- 1.3 Estimated Annual Usage:
 - 1.3.1 104 - 150-pound cylinders: Delivered to Lake Mary
 - 1.3.2 92 – 1 ton containers: Delivered to the Wildcat Wastewater and Lake Mary WTP
- 1.4 Delivery: Maximum of 10 days after receipt of order (ARO).
- 1.5 In the event of a tank or valve issue, include your emergency response plan to aid the City during the emergency.
- 1.6 General Note: Chlorine shall meet ANSI/NSF 60.

2. Liquid Cationic Polymer (Disc Thickener and Geo Bags):

- 2.1 Minimum Quantity per Order: one – 275-gallon totes.
- 2.2 Estimated Annual Usage: twenty-six – 275 Gallon totes to be delivered to the Wildcat Wastewater Treatment Plant.
- 2.3 Function of Product: The product will be used as a versatile coagulant.
- 2.4 Product Used in the past: T-floc 2802 for Geobags. And T-floc 2810 for Disc Thickener.
- 2.5 Delivery: Maximum of 5 days after receipt of order (ARO).
- 2.6 Vendor Requirements: Provide information on the presence and quantity of epichlorohydrin and acrylamide in products bid.
- 2.7 Primary use of the product shall be as a coagulant for wastewater sludge.
- 2.8 Product shall be chlorine-resistant and effective over a broad, varied pH range.
- 2.9 Product shall be capable of being diluted for optimum use and shall produce a compact, easily dewatered sludge at all dilutions.
- 2.10 Product shall be capable of feeding "neat" or to a dilution of 1%.

3. Sodium Hypochlorite:

- 3.1 Form: Liquid, approximately 12.5% Sodium Hypochlorite.
- 3.2 How Shipped: Bulk shipment
- 3.3 Minimum Quantity Per Order: 2000 gals
- 3.4 Estimated Annual Usage: 48,000 Gals.
- 3.5 Delivery: To Rio de Flag - Maximum of 10 days after receipt of order (ARO).
- 3.6 General Note: Chlorine shall meet ANSI/NSF 60.

4. Sodium Hydroxide 25%:

- 4.1 Form: Liquid, approximately 25% Sodium Hydroxide.
- 4.2 How Shipped: Bulk shipment
- 4.3 Minimum Quantity Per Order: 4,500 gals
- 4.4 Estimated Annual Usage: 18,000 Gals.
- 4.5 Delivery: To Lake Mary WTP - Maximum of 10 days after receipt of order (ARO).
- 4.6 General Note: Sodium hydroxide shall meet ANSI/NSF 60.

5. Sodium Bisulfite 40%:

- 1.1 Form: Liquid, approximately 40% Sodium Bisulfite.
- 1.2 How Shipped: Totes or Bulk shipment
- 1.3 Minimum Quantity Per Order: 2400 gallons
- 1.4 Estimated Annual Usage: 65,000 Gals.
- 1.5 Delivery: To Wildcat Hill WRP - Maximum of 10 days after receipt of order (ARO).
- 1.6 General Note: Sodium bisulfite shall meet ANSI/NSF 60.

6. Natural/Organic Carbon Source:

- 6.1 Form: Natural carbon-based liquid.
- 6.2 How Shipped: Bulk shipment
- 6.3 Minimum Quantity Per Order: 3,500 gallons - To be determined based on tank capacity.
- 6.4 Estimated Annual Usage: Typically ordered once per year when the bulk tank is low.
- 6.5 Delivery: Maximum of 10 days after receipt of order (ARO).
- 6.6 General Note: The product must be suitable for use as a carbon source for denitrification processes and meet all applicable standards.

Three Delivery Points for chemical delivery:

Wildcat Hill Wastewater Treatment Plant
2800 N. El Paso Flagstaff Road
Flagstaff, AZ 86004
(928) 213-2425

Rio de Flag Wastewater Treatment Plant
600 S. Babbitt Dr.
Flagstaff, AZ 86001
(928) 213-2414

Lake Mary Water Treatment Plant
4500 S Lake Mary Rd.
Flagstaff, AZ 86005
(928) 213-2450