

COMMODITIES PURCHASE CONTRACT

Contract No. 2026-99

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 **Thatcher Company of Arizona**, ("Contractor"). City and Contractor may be referred to herein individually as a Party or collectively as the Parties.

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

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

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

1. General Description: T-Floc B41 Coagulant

2. Term and Renewal.

2.1 Contract Term: The term is for a period of **three (3) years** unless terminated pursuant to the provisions of the Contract. The Contract will be effective as of the date signed by both parties.

2.2 Renewal: The Contract may be renewed or extended for up to **two additional one-year terms** by mutual written consent of the Parties. The City Manager or his/her 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 for ninety (90) days. The City Manager or his/her designee (the Purchasing Director) shall have the authorize to approve the 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, 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 Price Schedule. Unless otherwise stated in the Price Schedule, the City shall pay all taxes applicable to any purchase it makes under this Contract.

4. Invoicing and Payment after Delivery.

4.1 Payment: Unless otherwise stated in the Price Schedule, 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 Manufacturer's Warranties: Contractor shall deliver all Manufacturer's Warranties to the City upon the City's acceptance of the Commodities.

5.3 Delivery:

5.1.1 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.

5.1.2 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.

5.4 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 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. Cooperative Use: If Contractor agreed during the procurement process, Contractor will enter into cooperative purchase arrangements, as sanctioned by state and federal law, to allow Contractor to sell the Commodities identified on the Price Schedule to any member of a cooperative group under the same pricing, terms, and conditions of the Contract awarded to the Contractor.
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:

Brian Huntzinger
Water Services
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
bhuntzinger@flagstaffaz.gov

To Contractor:

Jeff Zidek
1905 Fortune Rd.
Salt Lake City, UT 84104
Jeff.Zidek@tchem.com
801-541-9469

With a copy to:

Teddy Callan
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
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.

THATCHER COMPANY OF ARIZONA:

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 September 19, 2024