

AGREEMENT FOR PURCHASE AND SALE OF GOODS

Bid/Proposal No. 18-068

Clerk Tracking No. _____

Project Name: **Purchase of Treatment Plant Chemicals**

THIS AGREEMENT FOR PURCHASE AND SALE OF GOODS (the "Agreement") is made this **17th day of September 2018**, by and between **LHOIST NORTH AMERICA OF ALABAMA, LLC** a Limited Liability Company authorized to do business in Florida whose address is 1479 Town Center Drive; Lakeland, Florida 33803 ("Seller") and **THE CITY OF NAPLES**, a Florida Municipal Corporation, the address of which is 735 Eighth Street South, Naples, Florida 34102 ("Buyer"). In consideration of the mutual covenants and agreements hereinafter set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Buyer and Seller agree as follows:

1. **Description of Goods; Sale and Delivery.** Seller shall sell, transfer, and deliver to Buyer the goods described, **Item-S4: Quicklime at \$301.13 ton**, as stated in **Invitation to Bid (ITB) 18-068** herein referenced and made a part of this Agreement and as subject to such terms as are set forth in the Invitation to Bid and in this Agreement.
2. **Acceptance; Purchase.** Buyer shall accept the goods and pay indicated per ton amount that is not to exceed a Department's adopted budget with an estimated Annual expenditure of \$2,000,000.00 and as ordered in accordance with the terms of this Agreement and shall be paid in the manner set forth in this Agreement. Invitation to Bid (ITB) 18-068 is being Awarded to multiple Vendors.
3. **Identification of Goods.** Identification of the goods shall not be deemed to have been made until both Buyer and Seller have agreed that the goods in question are in accordance with the performance of this Agreement.
4. **Rate and Time of Payment.** Unless otherwise specified, Buyer shall make payment to Seller for the goods within thirty (30) days after the goods are received by Buyer.
5. **Receipt of Goods.** The goods shall be deemed received by Buyer when delivered to the Buyer at **City of Naples; Attention: Water Treatment Plant; 1000 Fleischman Boulevard; Naples, Florida 34102**. Delivery of the goods and services to Buyer shall occur **between 7:00am and 5:00pm, Monday through Friday**.
6. **Risk of Loss.** The risk of loss from any casualty to the goods, regardless of the cause, shall be on Seller up to the time of receipt of the goods by the Buyer at the place of delivery, but only after any proper inspection has been completed without rejection of the goods. Thereafter, such risk shall be on Buyer, including any goods thereafter returned to Seller until their receipt by the Seller.
7. **Warranty Against Encumbrances.** Seller warrants that the goods are now free, and at the time of delivery shall be free, from any security interest or other lien or encumbrance.

8. **Warranty of Title.** Seller warrants that at the time of signing this Agreement or at time of delivery, Seller neither knows, nor has reason to know, of the existence of any outstanding title or claim of title hostile to the rights of Seller of the goods.

9. **Product Warranty.** Seller provides general warranties of fitness and general warranties that the goods are free from defects, for 1 year from acceptance of the goods, except as may otherwise be set forth in the Description/ITB, or other attached warranty: Manufacturer's warranty will apply. **Seller shall provide all warranty documentation at time of delivery.**

10. **Right of Inspection.** Buyer shall have the right to inspect the goods at the time and place of delivery, and within five (5) business days after delivery, Buyer must give notice to Seller of any claim for damages on account of the condition, quality, or grade of the goods, and Buyer must specify in detail the basis of such claim. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the goods by Buyer.

11. **Procedure as to Rejected Goods.** On receipt of notification of rejection, Seller will immediately arrange to receive back the goods for shipment and return. However, within five (5) days, Seller may have an agent inspect such goods for nonconformity; otherwise, such inspection will be made on return to Seller's facility. When such goods are confirmed or acquiesced as nonconforming, Seller will ship conforming goods within thirty (30) days of the notice of rejection unless Buyer earlier notifies Seller to forgo such shipment.

12. **Governing Law.** The parties acknowledge that the transaction that is the subject matter of this Agreement bears a reasonable relation to the State of Florida and agree that the law of the State of Florida will govern their rights and duties. The parties specifically intend that the provisions of Article 2 of the Florida Uniform Commercial Code will control as to all aspects of this Agreement and its interpretation, except Software, and that all the definitions contained therein will be applicable to this Agreement except where this Agreement may expressly provide otherwise.

13. **The SELLER shall:** (a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service; (b) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the established cost of the CITY or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY; and (e) Promptly notify the CITY of any public records request.

14. **Description/Proposal Documents.** The terms and conditions of **Invitation to Bid (ITB) No. 18-068** which is herein referenced and made a part hereof shall be incorporated herein as a part of this Agreement.

15. **Notices and Address of Record.** All notices required or made pursuant to this Agreement to be given by Seller to Buyer shall be in writing and shall be delivered by overnight courier, by hand or by the (USPS) United States Postal Service, first class mail service, postage prepaid, return receipt requested, or as otherwise agreed upon and addressed to the following:

To Buyer:

City of Naples

735 Eighth Street South; Naples, Florida 34102-3796

Attention: **A. William Moss**, City Manager

All notices required or made pursuant to this Agreement to be given by Buyer to Seller shall be made in writing and shall be delivered by overnight courier, by hand or by the (USPS) United States Postal Service, first class mail service, postage prepaid, return receipt requested, or as otherwise agreed upon and addressed to the following:

To Seller: Lhoist North America of Alabama, LLC

1479 Town Center Drive; Lakeland, Florida 33803

Attention: **J. Dale James**, Sales Manager

FEIN Number: On-File

Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall together constitute one and the same instrument.

17. **Effective Date.** This Agreement shall commence on **October 1, 2018 and be valid through 09/30/2020** and shall have with mutual agreement of the Seller and Buyer the option for **three (3) 1/year renewal options.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above.

SELLER WITNESSED:

By: _____

Printed Name

SELLER:

Lhoist North America of Alabama, LLC

By: _____
Authorized Representative

Printed Name

ATTEST:

By: _____
Patricia L. Rambosk, City Clerk

BUYER:

City of Naples, Florida

By: _____
A. William Moss, City Manager

Approved as to form and legal sufficiency:

By: 
Robert D. Pritt, City Attorney