

RESOLUTION NO. 23-94

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH CEDAR CHEM, LLC, FOR THE PURCHASE OF LIQUID SODIUM ALUMINATE AT THE UNIT PRICES SET FORTH IN THE BODY OF THE RESOLUTION.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement between the City and Cedar Chem, LLC, relating to the purchase of liquid sodium aluminate, at the unit price of Nine Hundred Forty Dollars (\$940) per ton (full truck delivery) / Nine Hundred Eighty Dollars (\$980) per ton (partial truck delivery), in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 12th day of January, 2023.

CITY OF PANAMA CITY BEACH

By: _____


Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk

NOTICE TO AWARD

TO: Cedar Chem, LLC.
105 Plantation Avenue
Cedartown, GA 30125

BID NUMBER: **PCB23-17**

PRODUCT DESCRIPTION:

Liquid Sodium Aluminate – Bulk Chemical Purchase

The City of Panama City Beach ("City") has considered the BID submitted by you for the above-described Product in response to its Advertisement for Bids dated December 7, 2023 and associated Information for Bidders.

You are hereby notified that your Bid at the unit price of \$940.00/FT or \$980.00/PT has been accepted by the City. Provided, however, nothing in this Notice or your delivery to the City of the Agreement executed by you shall in any manner or way be deemed to create any contract between you and the City. No such contract shall be created unless and until the City signs the Agreement.

You are required by the Information for Bidders to execute the Agreement.

If you fail to execute said Agreement within ten (10) calendar days from the date of this Notice, City will be entitled to consider all your rights arising out of City's acceptance of your BID as abandoned.

You must return an acknowledged copy of this Notice of Award to the City, with the executed Agreement and required Certificates of Insurance and Bonds, within the above noted ten (10) calendar day period.

Dated this 17th day of January, 2023.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

CITY OF PANAMA CITY BEACH

Owner

By  _____

Name: Drew Whitman

Title: City Manager

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged

By Adrienne Hess _____

This the 17th day of January, 2023.

Name Adrienne Hess _____

Title Bid & Pricing Coordinator _____

[END OF NOTICE OF AWARD]

LIQUID SODIUM ALUMINATE AGREEMENT

THIS AGREEMENT FOR THE PURCHASE OF LIQUID SODIUM ALUMINATE is made and entered into this 17th day of January, 2023, by and between the CITY OF PANAMA CITY BEACH, FLORIDA, a municipal corporation (City) and Cedar Chem, LLC.
(Contractor).

PREMISES

1. SCOPE OF WORK

Contractor will deliver liquid sodium aluminate, as more particularly described in the Specifications listed in Invitation to Bid number PCB23-17.

If the Contractor believes that any particular product is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the City's Representative in writing of this belief. If the City's Representative believes that the particular scope of the contract as written, the Contractor will be ordered to and shall continue with supplying the product and at the cost stated within the scope. The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of this agreement.

2. COMPENSATION

As compensation for supplying the product contemplated herein and performance rendered by Contractor of its duties and obligations hereunder, City shall pay Contractor according to the not to exceed bid unit price submitted on PCB 23-17 ITB Liquid Sodium Aluminate. The City shall pay to the Contractor as full consideration for the delivery of product required by this Agreement, at the UNIT PRICE contained in the Contractor's cost proposal, upon the basis of actual measured quantities as the same may be finally determined by the City Manager or his designee(s).

- A. Extra and/or Additional Work Changes. Should City at any time during the progress of said work request any alterations, deviations, additions, or omissions from said specifications or other contract documents, it shall be at liberty to do so by written authorization to Contractor, and the same shall in no way affect or make void the Agreement. The unit price of any such addition or deletion from the contract Bid price, must be mutually agreed upon by both parties.
- B. Price Increases – Contractor may request a price increase adjustment no more than two times in any contract year. In the event Contractor desires to increase price, City must be notified immediately. Price increases must be approved by City and no payment for additional materials or services, beyond the amount stipulated in the Contract shall be paid without prior approval. All price increases

must be supported by Producer Price Index: Chemicals and Allied Products: Industrial Chemicals or manufacturer documentation and justification. Contractor must honor previous prices for thirty (30) days after approval and written notification from City. It is the Contractor's responsibility to keep all pricing up to date and on file with City. All price changes must be provided to City using the same format as was provided and accepted in the Contractor's proposal.

- C. Price Reductions – Price reductions may be offered at any time during Contract. City may request a price reduction, which Contractor shall permit, when such request is supported by Producer Price Index.

3. PAYMENT

Contractor will invoice for payment to the City when the delivery and satisfactory inspection of liquid sodium aluminate has been completed. The invoice(s) shall be delivered to accounts payable at City Hall, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413.

4. TERM

Unless terminated sooner pursuant to the provision of the Termination clauses contained in paragraph 5, and subject to the availability of funds appropriated for this purpose, this Agreement shall take effect on the executed date of award and be valid for a period of a one-year term with two (2), one-year renewals for a total of three years upon mutual written agreement of both parties.

5. TERMINATION OF CONTRACT

- A. City Termination for Cause. The Agreement may be terminated by the City for cause in the event of any breach hereof, including, but not limited to, Contractor'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 City regarding the Work, (9) arrest or conviction of felony or fraud, or (10) any other material breach of this Agreement. In such event, the City shall provide Contractor with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the City's sole judgment and discretion, the City may afford Contractor an opportunity to cure said deficiency,

in which event the notice shall specify the time allowed. Upon termination, the City may take possession of the premises and of all materials thereon and finish the Work by whatever means it deems expedient.

- B. **City Termination for Convenience.** Notwithstanding any other provision hereof, the City may at any time terminate this Agreement or any Work issued under it, in whole or in part, without cause, upon thirty (30) days advanced written notice to Contractor. In such event, Contractor 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 City property. Upon receipt of notice, Contractor 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. Contractor shall also make every reasonable effort to cancel, upon terms satisfactory to the City, all orders or subcontracts related to the terminated Work. Contractor 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.

6. COMPLIANCE WITH LAWS.

The Contractor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. The Contractor shall protect and indemnify City of Panama City Beach and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Contractor, its representatives, sub-contractors, sub-consultants, professional associates, agents, servants, or employees. Additionally, Contractor shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to this contract from the federal government, State of Florida, Bay County, or municipalities when legally required, and maintain same in full force and effect during the term of the contract.

7. WARRANTY

The Contractor agrees that, unless otherwise specified in the specifications of the invitation to bid, the product furnished as a result of this invitation and award thereto shall be covered by the most favorable commercial warranty the Contractor gives to any customer for comparable quantities of such products and that the right and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other provision of the invitation/offer.

8. INSURANCE AND INDEMNIFICATION

Bidder shall at its expense maintain in force during the Term the insurance on policies and insurers acceptable to the City as required by the City's Insurance Requirements attached hereto as Exhibit "A."

1. Within thirty days of the date of the Award, and thereafter upon the written request of the City, Bidder shall furnish to the City such certificates of coverage and certified copies of policies pursuant to the City's Insurance Requirements. In order to satisfy this provision, the documentation required by this part must be sent to the following address: Attn: Carrie Jagers, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413.
2. Regardless of the coverage provided by any insurance, the successful Bidder shall indemnify, save harmless and defend the City, its agents, servants, or employees from and against any and all claims, liability, losses and/or causes of action which may arise from any negligent act or omission of the successful Bidder, its sub-Bidders, agents, servants or employees during the course of performing services or caused by the goods provided pursuant to these Bid documents and/or resultant contract.

If any third-party claim is made against the City that, if sustained, would give rise to indemnification liability of the Bidder under this Agreement, the City shall promptly cause notice of the claim to be delivered to the successful Bidder and shall afford the Bidder and its counsel, at the Bidder's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this paragraph shall survive the termination of this Agreement.

9. ATTORNEY'S FEES

In the event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at all trial and appellate levels and at any mediation or arbitration.

10. TIME

Time is of the essence in this Agreement.

11. FORCE MAJEURE

The Contractor's failure or inability to perform the stated scope of work at any time as a result of circumstances beyond its control, such as, but not limited to, war, terrorism, strikes, fires, floods, hurricanes, acts of God, power failures, or damage or destruction of any facility related thereto, shall not be deemed a breach of this Agreement.

12. REMEDIES

In the event of failure of the Contractor to deliver product in accordance with the contract terms and conditions, the City, after due written notice, may procure the

products from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have. Failure to cure a breach of a material term hereunder within four (4) hours of Contractor's receipt of written notice thereof shall entitle the City to terminate this Agreement. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Florida.

13. ASSIGNMENT

This Agreement is not assignable.

14. SEVERABILITY

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

15. MODIFICATIONS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Contractor.

16. WAIVER

Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the City of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

17. NOTICES

Any notice required by this Agreement shall be directed to the parties as follows:

C. As to City:

City Representative: Leah Bailey

Title/Position: Utilities Business Manager

17007 Panama City Beach Pkwy., PCB, FL 32413

Phone: (850) 233-5100, ext. 2420

D. As to Contractor:

Contract Representative: Adrienne Hess

Title/Position: Bid & Pricing Coordinator

Email address: adrienne.hess@cedarchem.com

Mailing address: 105 Plantation Ave, Cedar town, GA 30125

Phone/Cell: 770 748 3863

18. ENTIRE AGREEMENT

This Agreement, and any exhibits or appendixes attached hereto and incorporated herein, constitutes the entire agreement between parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written, and there are no representations, warranties, covenants, or other agreements among them.

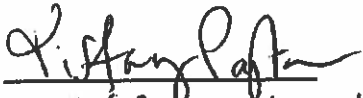
IN WITNESS WHEREOF, the Contractor has executed this Agreement as of the day and year first above written.

Signed in the presence of Contractor

Witness 

(Print Name): Samantha Tew

By: _____

Witness 2 

(Print Name): Tiffany Payton

**THE CITY OF PANAMA
CITY BEACH, FLORIDA,**
a municipal corporation

By: 
Drew Whitman , City Manager

ATTEST:



City Clerk