

City of Marco Island Florida



CONTRACT 16-026:

Water and Wastewater Treatment Chemicals

Antiscalant (RO Membranes)

Ammonium Sulfate (NH₃SO₄)

Citric Acid (C₆H₈O₇) powder/granulated

September 13, 2016

Hawkins, Inc.
DBA Hawkins Water Treatment Group
2263 Clark St.
Apopka, FL 32703
Phone: (800) 330-1369

AND

CITY OF MARCO ISLAND
50 Bald Eagle Drive
Marco Island, Florida 34145
Phone: (239) 389-5000

SERVICE AGREEMENT

WATER AND WASTEWATER TREATMENT CHEMICALS

Contract #16-026

THIS AGREEMENT, made and entered into this 13th day of September, 2016, by and between Hawkins, Inc./DBA Hawkins Water Treatment Group hereinafter called the "Contractor," and the City of Marco Island, Florida, a political subdivision of the State of Florida, Collier County, hereinafter called the "City."

WITNESSETH

1. **CITY APPROVAL OF BID/AGREEMENT**: The attached Contractor's bid for ITB #16-026 Water and Wastewater Treatment Chemicals, dated July 25, 2016, has been approved for contract award.
2. **COMMENCEMENT**: Services upon this annual Agreement will be employed on an annual basis commencing on or about October 1, 2016 and ending on September 30, 2019.

The City may, at its sole discretion, extend this Agreement together with all of the terms and conditions contained herein for an additional one (1) three (3) year term. Price increase is limited to the Consumer Price Index for All Urban Consumers (CPI-U) increases for the South Region Size B/C as reported for October to September of each year.

3. **STATEMENT OF WORK**: Water and Wastewater Treatment Chemicals as defined and specified in the bidding documents.
4. **COMPENSATION**: The City shall compensate the contractor for the satisfactory performance of work based solely on the services provided as may be ordered by the City from time to time during the term of this Agreement. Payments to the contractor for work completed shall be made in accordance with the following unit price(s):

Antiscalant (RO Membranes) @376/drum DELIVERED
Ammonium Sulfate (NH₃SO₄) @1.67/gal DELIVERED
Citric Acid (C₆H₈O₇) powder/granulated @1.04/lb DELIVERED

5. **NOTICES**: All notices from the City to the Contractor shall be deemed duly served if mailed by registered or certified mail to the Contractor at the following address:

Jason Schroeder
 Hawkins, Inc.
 DBA Hawkins Water Treatment Group
 2263 Clark St.
 Apopka, FL 32703

All notices from the Contractor to the City shall be deemed duly served if mailed by registered or certified mail to the City at the following address:

Lina Upham
Purchasing and Fiscal Analyst
City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145

The Contractor and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

6. **NO PARTNERSHIP:** Nothing herein contained shall create, or be construed as creating, a partnership between the City and the Contractor. Moreover, nothing stated in this Agreement shall be interpreted to indicate in any way that the Contractor is an agent of the City of Marco Island.

7. **PERMITS; LICENSES; TAXES:** In compliance with Section 218.80, F.S., all City permits necessary for the prosecution of the work shall be obtained by the Contractor. Payment of fees for all such permits issued by the City shall be processed internally by the City. All non-City permits necessary for the prosecution of the work shall be procured and paid for by the Contractor. The Contractor shall also be solely responsible for payment of any and all taxes levied on the Contractor. In addition, the Contractor shall comply with all rules, regulations and laws of the City of Marco Island, Collier County, the State of Florida, and the U.S. Government now in force or hereafter adopted. The Contractor further agrees to comply with all laws governing the responsibility of an employer with respect to persons directly or indirectly employed by the Contractor.

8. **NO IMPROPER USE:** The Contractor will not use, nor cause or permit any employee or subcontractor to use or occupy in any manner whatsoever, City or private facilities or properties for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Contractor the City, or its authorized representative, shall deem such conduct on the part of the Contractor to be objectionable or improper. Accordingly, the City shall have the right to suspend this Agreement with Contractor in full or in part. Should the Contractor fail to correct any noted violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension shall continue until the violation is cured. The Contractor further agrees not to commence operations during the suspension period until the violation has been corrected to the satisfaction of the City. The City reserves the right to immediately terminate this Agreement for the foregoing actions or inactions by the Contractor.

9. **TERMINATION:** Should the Contractor be deemed or found to have failed to perform services herein in a professional manner satisfactory to the City in accordance with standards of practice in the industry, and/or the terms and requirements of this Agreement, the City may terminate said Agreement immediately for cause. Moreover, the City may terminate this Agreement for convenience with a seven (7) day written notice to the Contractor. The City shall be the sole judge of non-performance or cause.

10. **NO DISCRIMINATION:** The Contractor agrees not to discriminate against or upon employees or subcontractors as to race, sex, color, creed or national origin.

11. INDEMNIFICATION

11.1 To the maximum extent permitted by Florida law, Contractor shall indemnify and hold harmless the City, and their respective officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional misconduct of Contractor or anyone employed or utilized by the Contractor in the performance of this contract and any Work Order issued pursuant thereto. In addition to the duty to indemnify and hold harmless the City as required by this paragraph, Contractor shall have the duty to defend the City and its respective officers and employees from all claims, damages, losses or costs, including, but not limited to, reasonable attorneys' fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor or anyone employed or utilized by the Contractor in the performance of this contract and any Work Order issued pursuant thereto. The duty to defend under this Paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, City, and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this Paragraph will survive the expiration or earlier termination of this contract and any Work Order issued pursuant thereto until it is determined by final judgment that an action against the City or an indemnified party for any matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

11.2 In claims against any person or entity indemnified under this Article by an employee of contractor, anyone directly or indirectly employed by Contractor, or anyone for whose acts the Contractor may be liable, the indemnification obligations shall not be limited to any limitation on amount or types of damages, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability benefits acts or other employee benefit acts.

11.3 The obligations of Contractor under this Article shall not extend to the liability of the City's architect, its agents, or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (b) the giving of or the failure to give direction or instructions by the architect, its agents or employees, provided such giving or failure to give is the sole cause of the injury or damage.

11.4 Contractor shall procure contractual liability insurance to cover its obligation under this article.

12. INSURANCE AND SAFETY, GOVERNMENTAL COMPLIANCE AND HAZARDOUS MATERIALS:

12.1 Insurance

12.1.1 During the entire term of this contract and any extensions thereof, Contractor shall obtain and maintain at Contractor's expense, the insurance coverages required by the terms of the contract and Exhibit B in accordance with the requirements and limits set forth therein. Such insurance shall be kept in full force and effect until acceptance of the Work by the City, except as otherwise required hereby. By obtaining the insurance required by this Article, Contractor shall in no manner lessen, diminish or affect Contractor's obligations under this contract and any Work Order issued pursuant thereto. Such insurance shall be maintained with insurance companies both acceptable to the city and licensed to transact business and issue insurance in the State of Florida.

employees. Contractor shall require its personnel to attend any safety meetings the City might conduct and direct Contractor to attend.

12.2.2 Contractor agrees that in performing its Work, it will not create, use or dispose of any hazardous chemicals or substances in an unlawful or hazardous manner and shall be solely responsible for the lawful, proper and safe handling, storage and removal of all hazardous wastes, chemicals and substances which are introduced to the site, or removed from the site, by Contractor's operations. The term "hazardous wastes, chemicals or substances" shall mean those materials and substances prohibited, proscribed, or the use of which is controlled by any agency of the federal government or the applicable state or local agency having jurisdiction of such matters. In the event Contractor encounters material reasonably believed to be hazardous wastes, chemicals or substances, Contractor shall immediately stop work in the area affected and report such condition to City in writing. Contractor shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. Contractor shall be responsible for any and all claims and damages resulting from its use, handling, storage, removal and disposal of such hazardous wastes, chemicals or substances from the Project, and will indemnify, defend and hold City harmless from any and all liability associated with such use, handling, storage, removal and disposal including all associated attorney's fees and costs and costs of all cleanup operations wherever and whenever required by any governmental authority or City.

13. **ADMINISTRATION OF AGREEMENT:** This Agreement shall be fully administered by the General Manager of the Water and Sewer Department or his designee on behalf of the City. The Contractor shall only receive and act upon orders and directives issued by the General Manager of the Water and Sewer Department, his designee, or the City's Purchasing and Fiscal Analyst.

14. **COMPONENT PARTS OF THIS AGREEMENT:** This Agreement consists of, by reference, the Contract Bidding Documents for: Water and Wastewater Treatment Chemicals, **Contract No. 16-026** and the Contractor's Bid submittal, attached, and thus made a formal part of the binding Agreement between the City and the Contractor.

15. **OFFER EXTENDED TO OTHER ENTITIES:** The City of Marco Island encourages and agrees to the successful bidder/proposer extending the pricing, terms and conditions of this solicitation or resultant contract to other governmental entities at the discretion of the successful bidder/proposer.

16. **SUBJECT TO APPROPRIATION:** It is further understood and agreed by and between the parties herein that this Agreement is subject to the continuation of appropriation of funds by the City Council of the City of Marco Island.

17. **AUDITS AND PUBLIC RECORDS:**

17.1. **Audits.** Contractor shall maintain adequate records to justify all charges, expenses and costs incurred in performing the Work outlined in this Agreement for at least four (4) years after the completion of Work pursuant to this Agreement. Owner reserves the right to audit the records of the Contractor related to the Work performed at any time during the execution of the Work and for a period of four (4) years after final payment for such Work is made.

17.2. **Public Records.** Contractor acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to Marco Island contracts, pursuant to the provisions of Chapter 119, Florida Statutes. Contractor agrees to maintain public records in its possession or control in connection with its performance under this Agreement and to

provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. Contractor shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Owner. In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, Contractor, whether finished or unfinished, shall become the property of the Owner and shall be delivered by Contractor to the Owner's City Manager, at no cost to the Owner, within seven (7) days of termination of this Agreement. All such records stored electronically by Contractor shall be delivered to the Owner in a format that is compatible with the Owner's information technology systems. Upon termination of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to Contractor shall be withheld until all documents are received as provided herein. Contractor's failure or refusal to comply with the provisions of this Section may result in the immediate termination of this Agreement by the Owner.

18. **ANTI-LOBBYING:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for Contractor any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Owner shall have the right to cancel this Agreement without liability.

19. **SEVETABILITY:** Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

20. **ORDER OF PRECEDENCE:** In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Construction Agreement and the General Terms and Conditions shall take precedence over the terms of all other Contract Documents. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Construction Agreement and the General Terms and Conditions, the conflict shall be resolved by imposing the more strict obligation under the Contract Documents upon Contractor.

21. **GOVERNING LAW, JURISDICTION AND VENUE:** The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue for any action to enforce this Agreement shall be in Collier County, Florida.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the latest date(s) indicated below.

ATTEST:

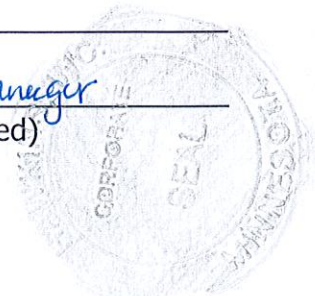
Hawkins, Inc.
DBA Hawkins Water Treatment Group


Corporate Secretary/Witness

2nd Witness (If Not Incorporated)


BY: Jason Schroeder

ITS: SE Regional Manager
President (If Incorporated)



Date: 9/28/16

[Corporate Seal]

ATTEST:

OWNER:
CITY OF MARCO ISLAND
MARCO ISLAND, FLORIDA


Laura Litzan, City Clerk

Date: 10-4-16

BY: 
Roger Hernstadt, City Manager, 10/4/16

RH
10.4.16
10/4/16


Alan Gabriel, City Attorney

EXHIBIT A

BID SUBMITTAL

**Water and Wastewater Treatment Chemicals
ITB# 16-026**

Submitted by:

Hawkins, Inc.
DBA Hawkins Water Treatment Group
2263 Clark St.
Apopka, FL 32703
Phone: (800) 330-1369

**Hereby incorporated by reference
On file at the Purchasing Office**