

July 12, 2017

CITY OF TAMARAC, FLORIDA

RESOLUTION NO. R-2017- 87

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO AWARD BID #17-22B, "FURNISH, DELIVER AND DISCHARGE OF QUICKLIME" TO, AND EXECUTE AGREEMENTS WITH, LHOIST NORTH AMERICA OF ALABAMA, LLC FOR THE CITY OF TAMARAC AND AN ADDITIONAL TWENTY MEMBERS OF THE SOUTHEAST FLORIDA GOVERNMENTAL PURCHASING COOPERATIVE (CO-OP); AND WITH CARMEUSE LIME AND STONE ON BEHALF OF ONE CO-OP MEMBER, THE CITY OF HOLLYWOOD, FOR A PERIOD OF THREE (3) YEARS WITH THREE (3) ADDITIONAL ONE-YEAR RENEWAL OPTIONS, PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

---

WHEREAS, the City of Tamarac served as "lead agency" on Bid 17-22B, "Furnish, Deliver and Discharge of Quicklime" issued on behalf of the Southeast Florida Governmental Purchasing Cooperative (Co-op); and

WHEREAS, Twenty-one governmental agencies, including the City of Tamarac will utilize this bid to purchase approximately 58,000 tons annually, of quicklime for the Co-op, of which approximately 1,500 tons will be purchased for the City of Tamarac, a copy of said bid is on file with the City Clerk; and

WHEREAS, the City of Tamarac publicly advertised Bid 17-22B, "Furnish, Deliver and Discharge of Quicklime" on the City's web-site and in the Sun-Sentinel on June 18, 2017; and

WHEREAS, three (3) vendors downloaded the bid from the City's web-site; and two (2) complete bids were opened and reviewed to determine cost and responsiveness to the City's specifications; and

WHEREAS, Lhoist North America of Alabama, LLC submitted a delivered the lowest delivered bid price per ton for the City, and prices as shown on the bid tabulation for other members of the Co-Op, a copy of the bid tabulation is attached hereto as Exhibit "1"; and

WHEREAS, Lhoist North America of Alabama, LLC was deemed the lowest responsive and responsible bidder for the City of Tamarac, and for twenty (20) members of the Co-op, with a copy of the bid submitted on file with the City Clerk; and

WHEREAS, Carmeuse Lime and Stone was deemed the lowest responsive and responsible bidder for high calcium granular quicklime for the City of Hollywood, a member of the Co-op, with a copy of the bid submitted on file with the City Clerk; and

WHEREAS, the City of Tamarac, acting as lead agency for the Co-op acts on behalf of the Co-op when awarding contracts for quicklime; and

WHEREAS, pursuant to Section 5 of the executed Agreements, Lhoist North America of Alabama, LLC, and Carmeuse Lime & Stone, Inc. may seek a price adjustment on a quarterly basis based on actual costs or in accordance with one or more recognized indices; and

WHEREAS, current dynamic economic conditions dictate that the best interests of the City and the Co-op will be met by the utilization of an ongoing quarterly material price adjustment formula, which allows for escalation and de-escalation of material pricing on a quarterly basis, effective October 1<sup>st</sup>, January 1<sup>st</sup>, April 1<sup>st</sup> and July 1<sup>st</sup> of each year; and

WHEREAS, sufficient funds are available from the Public Services Department Operating funds; and

WHEREAS, it is the recommendation of the Director of Public Services and the Purchasing and Contracts Manager that Bid 17-22B be awarded to and an agreement executed with Lhoist North America of Alabama, LLC for furnishing, delivering and discharging quicklime, for a period of three years with three (3) additional one (1) year renewal options for the City of Tamarac, and on behalf of twenty (20) other agencies in the Co-op; and

WHEREAS, it is the recommendation of the Director of Public Services and the Purchasing and Contracts Manager that Bid 17-22B be awarded to and an agreement executed with Carmeuse Lime and Stone for furnishing, delivering and discharging high calcium granular quicklime, for a period of three (3) years with three (3) additional one (1) year renewal options for the City of Hollywood, an agency in the Co-op; and

WHEREAS, the City Commission of the City of Tamarac, Florida deems it to be in the best interest of the residents of the City of Tamarac to award Bid 17-25B and execute an agreement with Lhoist North America of Alabama, LLC for

furnishing, delivering and discharging quicklime, for a period of three (3) years with three (3) additional one (1) year renewal options, on behalf of the City of Tamarac and on behalf of an additional Twenty (20) agencies in the Southeast Florida Governmental Purchasing Cooperative, and

WHEREAS, the City Commission of the City of Tamarac, Florida deems it to be in the best interest of the residents of the City of Tamarac to award Bid 17-22B and execute an agreement with Carmeuse Lime and Stone for furnishing, delivering and discharging high calcium granular quicklime, for a period of three (3) years with three (3) additional one (1) year renewal options, for the City of Hollywood, an agency in the Co-op.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA THAT:

SECTION 1: The foregoing "WHEREAS" clauses are HEREBY ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof and all exhibits referenced and attached hereto are incorporated herein and made a specific part of this resolution.

SECTION 2: The award of Bid 17-22B, "Furnish, Deliver and Discharge of Quicklime", to Lhoist North America of Alabama, LLC, on behalf of the City of Tamarac and twenty (20) agencies in the Southeast Florida Governmental Purchasing Cooperative, is HEREBY AUTHORIZED.

SECTION 3: The appropriate City officials are hereby authorized to execute an agreement with Lhoist North America of Alabama, LLC as part of said award, a copy of which is attached hereto as Exhibit "2" for prices as shown in Exhibit "1" on behalf of the City of Tamarac and twenty (20) entities within the Southeast Florida Governmental Purchasing Cooperative.

SECTION 4: The award of Bid 17-22B, "Furnish, Deliver and Discharge of Quicklime", to Carmeuse Lime and Stone, for the provision of high calcium granular lime for the City of Hollywood, an agency in the Co-op, is HEREBY AUTHORIZED.

SECTION 5: The appropriate City officials are hereby authorized to execute an agreement with Carmeuse Lime and Stone as part of said award for high calcium quicklime, a copy of which is attached hereto as Exhibit "3" for prices as shown in Exhibit "1" on behalf of the City of Hollywood, an agency in the Co-op.

SECTION 6: The City Manager, or his designee, is hereby authorized to approve and execute any subsequent renewal options to this Agreement, and to initiate Change Orders in amounts not to exceed \$65,000 per Section 6-147 of the City Code.

SECTION 7: All resolutions or parts of resolutions in conflict herewith are HEREBY repealed to the extent of such conflict.

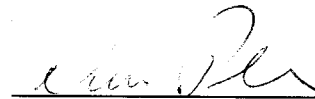
SECTION 8: If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or

July 12, 2017

invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

SECTION 9: This Resolution shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED this 23 day of August 2017.



DEBRA PLACKO  
VICE MAYOR

ATTEST:



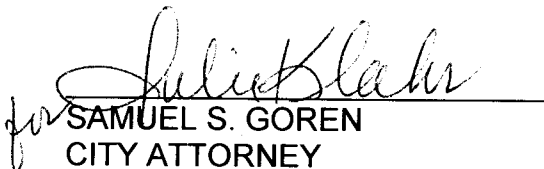
PATRICIA TEUFEL, CMC  
CITY CLERK

RECORD OF COMMISSION VOTE:

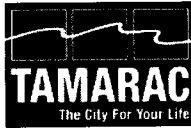
MAYOR DRESSLER  
DIST 1: COMM. BOLTON  
DIST 2: COMM. GOMEZ  
DIST 3: COMM. FISHMAN  
DIST 4: VICE MAYOR PLACKO

absent  
yes  
yes  
yes  
yes

I HEREBY CERTIFY THAT I HAVE  
APPROVED THIS RESOLUTION  
AS TO FORM



SAMUEL S. GOREN  
CITY ATTORNEY



**AGREEMENT  
BETWEEN THE CITY OF TAMARAC  
AND**

**LHOIST NORTH AMERICA OF ALABAMA, LLC**

THIS AGREEMENT is made and entered into this 23 day of August, 2017 by and between the City of Tamarac, a municipal corporation with principal offices located at 7525 N.W. 88th Ave., Tamarac, FL 33321 (the "CITY") and Lhoist North America of Alabama, LLC a duly authorized Florida Foreign Limited Liability corporation with principal offices located at 3700 Hulen Street, Fort Worth, Texas 76107, (the "Contractor") to provide for Furnishing, Delivery and Discharge of Quicklime for the City of Tamarac and participating agencies in the Southeast Florida Governmental Purchasing Cooperative.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

**1) The Contract Documents**

The contract documents consist of this Agreement, Bid Document No. 17-22B, "Furnish, Deliver and Discharge Quicklime", including all conditions therein, (General Terms and Conditions, Special Conditions and/or Special Provisions), drawings, Technical Specifications, all addenda, the Contractor's bid/proposal included herein, and all modifications issued after execution of this Agreement; and Contract Attachment A, "Participating Agencies and Unit Pricing Provided in Bid", which is a schedule of individual agencies participating in the bid and delivered unit pricing for individual delivery locations, and Attachment B, "Trucking Fuel Charge Scale". These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein. In the event that there is a conflict between Bid Document No. 17-22B, "Furnish Deliver and Discharge Quicklime", as issued by the City, and the Contractor's Proposal, Bid Document No. 17-22B, as issued by the City shall take precedence over the Contractor's Proposal. Furthermore, in the event of a conflict between this document and any other contract documents, this Agreement shall prevail.

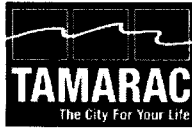
**2) The Work**

**2.1.** The Contractor shall perform all work for the City required by the contract documents as set forth below:

**2.1.1** Contractor shall furnish all labor, materials, and equipment necessary to Furnish, Deliver and Discharge Quicklime in accordance with the Technical Specifications, terms and conditions contained in Bid Document 17-22B, "Furnish, Deliver and Discharge Quicklime" for the City of Tamarac and participating agencies in the Southeast Florida Governmental Purchasing Cooperative for all items **EXCEPT FOR** Type 2 – HI CAL Granular Lime for the City of Hollywood, Florida.

**2.1.2** Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.

**2.1.3** Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or



subcontractors, if any, with respect to the work and services described herein.

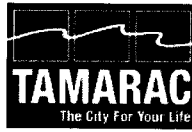
- 2.1.4** Contractor shall be required to complete the "Contractor Pass Request Form" (See attached Appendix A to Bid Document No. 17-22B), with photo identification of all personnel authorized to be on premises at City delivery sites. This form will be sent to the awarded vendor(s) with the notification of award letter.
- 2.1.5** Personnel additions and/or deletions shall be reported to the City's designated representative in writing, via fax to a number to be provided by the using agency, within twenty four (24) hours of the personnel change, by modification of the names submitted on the original Contractor Pass Request Form.
- 2.1.6** All personnel shall check-in with the Security Guard or Operator on duty immediately upon arrival at any delivery location. Photo identification, purpose of visit, and name of City staff contact, shall be required for entry.
- 2.1.7** Contractor shall ensure that only authorized Contractor employees and/or authorized City personnel shall have access to Contractor/City vehicles, work site, equipment, work products, reports, electronic data and any/all other information pertaining to the City. Contractor shall not admit any unauthorized personnel onto any work site. Contractor will not release, discuss or share any information on systems, equipment and/or operations, to any non-City personnel.
- 2.1.8** Upon leaving premises, all personnel shall be required to check out with the Security Guard or Operator on duty.

### 3) Insurance

- 3.1.** Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as specified in the original bid document or as required by the City's Risk and Safety Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, Builder's Risk and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk and Safety Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this agreement.
- 3.2.** Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies. Insurance limits are outlined below:

Insurance Requirements		
Line of Business/ Coverage	Occurrence	Aggregate
	Limits	
<b>Commercial General Liability Including:</b>	\$1,000,000	\$1,000,000
Premises/Operations		
Contractual Liability		
Personal Injury		
Explosion, Collapse, Underground Hazard		
Products/Completed Operation		
Broad Form Property Damage	\$1,000,000.00	\$1,000,000.00
Cross Liability and Severability of Interest Clause		
Automobile Liability	\$1,000,000.00	\$1,000,000.00
Workers' Compensation & Employer's Liability	Statutory CAM# 17-11	



**4) Term**

The term of this Agreement shall be for an initial three (3) year period, beginning November 1, 2017 through October 31, 2020. The City reserves the right to renew this Agreement for three (3) additional one (1) years periods subject to the Contractor's acceptance, satisfactory performance and determination that renewal will be in the best interest of the City.

**5) Contract Sum**

The Contract Sum for the above work for entities listed in Contract Attachment A "Participating Agencies and Unit Pricing Provided in Bid", shall be based on delivered cost per ton. The Contract sum includes all labor, materials and freight charges for the job also known as Bid No. 17-22B, "Furnish, Deliver, and Discharge Quicklime" for the Southeast Florida Government Purchasing Cooperative entities listed in Contract Attachment A – Participating Agencies and Unit Pricing. All Terms and Conditions, except product price, freight, transfer, and rail and truck fuel surcharges shall remain firm through the term of the contract,

**5.1** Contract Pricing shall be based on delivered cost per ton. The Contract sum includes all labor, materials and freight charges. Initial pricing shall be held firm from November 1, 2017 through December 31, 2017, and shall be based on the actual pricing adjustment submitted in October, 2017. Pricing changes will thereafter be allowable on a quarterly basis in accordance with Section 5.3, "Escalation / De-escalation" shown herein. Attachment A, "Participating Agencies and Unit Pricing Provided in Bid" provides the unit pricing submitted as of the bid opening date of July 11, 2017.

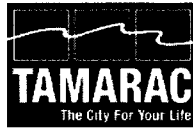
**5.2** In consideration of fluctuations in fuel prices, the City will allow rail and trucking fuel surcharges during the term of the contract.

**5.2.2** Rail Surcharge – The rail fuel surcharge rate will be based on actual contracts, invoices or published rates of the contractor's rail carrier. Contractor shall provide documentation regarding the rail carrier's pricing as a part of the request for an adjustment to the rail surcharge. No surcharge will be applied on top of another one. The Bidder should provide a rail fuel surcharge schedule as part of their bid submittal in the area provided in Appendix B herein.

**5.2.3** Trucking Surcharge - The truck fuel surcharge rate will be based on the Trucking Fuel Surcharge Scale contained in Appendix B herein, which shall be determined by referencing the Retail On-Highway Diesel Price – U.S. Average, as published by the U.S. Department of Energy, Energy Information Administration (DOE) for the third Monday of the final month of each quarter. The truck fuel surcharge will be applied to the base contract price per ton of quicklime transported effective with the start of the next quarter. No surcharge will be applied on top of another one. The bidder shall utilize the trucking fuel surcharge scale included in Attachment B, "Trucking Surcharge Scale" as a basis for adjustment, and surcharge adjustments will be based on that scale. The DOE Retail On-Highway Diesel Price – US Average index may be found at: [http://tonto.eia.doe.gov/oog/info/wohdp/diesel\\_detail\\_report\\_combined.asp](http://tonto.eia.doe.gov/oog/info/wohdp/diesel_detail_report_combined.asp).

**5.3 Escalation/De-escalation:**

**5.3.1** The City will accept price adjustments on a quarterly basis on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup> of each year. The Contractor must submit sufficient documentation to be given consideration for a price increase, and must pass-on a price decrease when the Contractor's costs are reduced. Approved documentation includes, but is not limited to published U.S. Department of Energy (DOE) reports on coal costs, Platt's Coal Index, U.S. Bureau of Labor Statistics (BLS) reports on Producer Price Index (PPI) for all commodities, U.S.



Energy Information Administration WTI publications on spot crude oil prices, BLS Electric Power Generation, Transmission and Distribution Index, BLS Crushed and Broken Limestone Index, BLS mining Machinery and Equipment Index; and copies of vendor monthly internal cost reports and/or actual invoices.

**5.3.2** Rail and Truck freight charges and changes for transfer costs require written verification from vendor's freight and transfer subcontractors, provided to the Purchasing & Contracts Division prior to initial contract term expiration of the Agreement. All Rail and Truck fuel surcharges will be applied initially on November 1, 2017, subject to change as detailed in Section 5.1 herein.

**5.3.3** The City acknowledges that Contractor's rail and truck carriers adjust fuel surcharges monthly. The Contractor will apply fuel surcharges for each quarter based on the amount of the rail and truck fuel surcharges in effect for the month preceding the quarterly price change as calculated in accordance with Section 5.2 of this Agreement, utilizing Appendix B to the original bid #17-22B. At the end of each quarter, the Contractor will process a "true up" by comparing the actual monthly rail and truck fuel surcharges for the quarter to the rail and truck fuel surcharges implemented at the time of the quarterly price change. Based on this comparison, the Contractor will issue the City a credit or debit that represents the variance.

**5.3.4** Cost adjustments, in all cases, shall reflect only a direct pass-through of costs, and no changes to the Contractor's profit margin shall be permitted. The City and the Contractor may also utilize recognized government/industry indices or combination of indices to be mutually agreed upon by the City and Contractor, when determining price increases.

## **6) Payments**

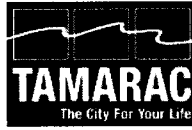
A monthly payment will be made for work that is completed, accepted and properly invoiced. The City shall pay the Contractor for work performed subject to the specifications of Bid 17-22B. All payments shall be governed by the Local Government Prompt Payment Act, F.S., Part VII; Chapter 218.

## **7) Conditions of Material**

All materials and products supplied by the Bidder in conjunction with this bid shall conform to the specifications of the bid. The City reserves the right to return the product to the Bidder and require the delivery of new product at no cost to the City.

## **8) Indemnification**

**8.1** The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.



**8.2** Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

- i. The Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.
- ii. City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Contractor under the indemnification agreement.

**8.3** The City and Contractor recognize that various provisions of this Agreement, including but not limited to this Section, provide for indemnification by the Contractor and requires a specific consideration be given there for. The Parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Contractor. Furthermore, the City and Contractor understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the City's and the Contractor's responsibility to indemnify.

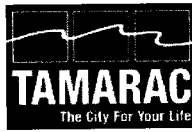
**8.4** Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

## **9) Non-Discrimination & Equal Opportunity Employment**

During the performance of the Contract, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability if qualified. The Contractor will take affirmative action to ensure that employees and those of its subcontractors are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity or expression, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor and its subcontractors shall agree to post in conspicuous places, available to its employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees that he/she will ensure that all subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

## **10) Independent Contractor**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered



under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**11) Assignment and Subcontracting**

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the city.

**12) Notice**

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

**CITY**

City Manager  
City of Tamarac  
7525 N.W. 88th Avenue  
Tamarac, FL 33321

With a copy to City Attorney at the following address:

Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Blvd., Suite 200  
Fort Lauderdale, FL 33308

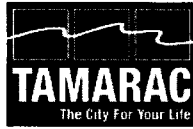
**CONTRACTOR**

Lhoist North America of Alabama, LLC  
3700 Hulen Street  
Fort Worth, TX 76107  
Attn: Ron Thompson, CEO

**13) Termination**

**13.1 Termination for Convenience:** This Agreement may be terminated by the City for convenience, upon seven (7) days of written notice by the terminating party to the other party for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the city against loss pertaining to this termination.

**13.2 Default by Contractor:** In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the material terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure.

**14) Uncontrollable Forces**

**14.1** Neither the City nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

**14.2** Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

**15) Agreement Subject to Funding**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Tamarac in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

**16) Venue**

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

**17) Signatory Authority**

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

**18) Severability; Waiver of Provisions**

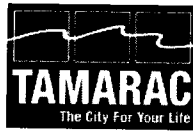
Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**19) Merger; Amendment**

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

**20) No Construction Against Drafting Party**

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

**21) Public Records**

**21.1** The City of Tamarac is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

**21.1.1** Keep and maintain public records required by the City in order to perform the service;

**21.1.2** Upon request from the City's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

**21.1.3** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.

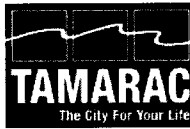
**21.1.4** Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

**21.2** During the term of the contract, the Contractor shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City's Auditor. The Contractor agrees to make available to the City's Auditor, during normal business hours and in Broward, Dade or Palm Beach Counties, all books of account, reports and records relating to this contract.

**22) Public Records Custodian**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
7525 NW 88TH AVENUE  
ROOM 101  
TAMARAC, FL 33321  
(954) 597-3505  
CITYCLERK@TAMARAC.ORG**



IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF TAMARAC, signing by and through its Mayor and City Manager, and CONTRACTOR, signing by and through its CEO duly authorized to execute same.

CITY OF TAMARAC

*for* *Harry Dressler*  
Harry Dressler, Mayor

Date

*August 23 2017*

*Michael C. Cernech*  
Michael C. Cernech, City Manager

Date

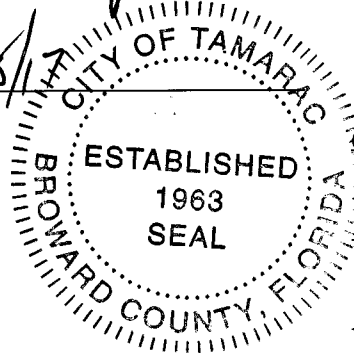
*8-24-17*

ATTEST:

*Patricia A. Teufel*  
Patricia A. Teufel, CMC  
City Clerk

Date

*8/25/17*



Approved as to form and legal sufficiency:

*Julie Klahr*  
City Attorney

Date

*8/22/17*

ATTEST:

*Kenneth E. Curtiss*  
Signature of Corporate Secretary

*KENNETH E. CURTISS*

Type/Print Name of Corporate Secy.

(CORPORATE SEAL)

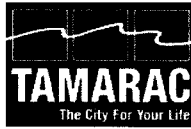
LHOIST NORTH AMERICA OF ALABAMA, LLC

Company Name

*Ron Thompson*  
Signature

Ron Thompson, CEO

*7/20/17*  
Date

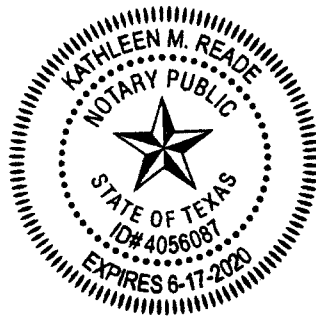


## CORPORATE ACKNOWLEDGEMENT

STATE OF TEXAS :  
 COUNTY OF TARRANT : SS

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Ron Thompson, CEO for Lhoist North America of Alabama, LLC, a duly authorized Florida Foreign Limited Liability Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this day of 20th July 2017.



Kathleen M. Read  
 Signature of Notary Public  
 State of ~~Florida~~ at Large  
TEXAS

Print, Type or Stamp  
 Name of Notary Public



Personally known to me or  
 Produced Identification

Type of I.D. Produced

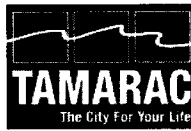


DID take an oath, or



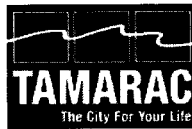
DID NOT take an oath.



**ATTACHMENT A****PARTICIPATING AGENCIES AND UNIT PRICING PROVIDED IN BID**

Below is a list of the agencies participating in this Agreement and their respective delivery locations:

AGENCY	DELIVERY ADDRESS	CITY/STATE/ZIP	CONTACT	PHONE / E-MAIL
Broward County Dist. 1A	3701 N State Road 7	Lauderdale Lakes 33319	Michael Belight	954/831-0940 MBELIGHT@broward.org
Broward County Dist. 2A	1390 NE 51 St.	Pompano Beach 33064	Michael Williams	954/831-4117 MWILLIAMS@broward.org
City of Coral Springs	3800 NW 85th Avenue	Coral Springs 33065	Alvan Jones	954/345-2162 ajones@coralsprings.org
City of Dania Beach	1201 Stirling Road	Dania Beach 33004	Phil Skidmore	954/924-6800 x3616 pskidmore@daniabeachfl.gov
City of Delray Beach	201 SW 7th St.	Delray Beach 33444	John Bullard	561/243-7319 bullardj@mydelraybeach.com
Town of Davie	3500 NW 76th Avenue	Hollywood, FL 33024	Stanley Ebanks Raul Sotelo	954/327-3750 954/327-3748
City of Deerfield Beach	290 Goolsby Blvd.	Deerfield Beach 33442	Albert Jernej	954/480-4370 aijernej@deerfield-beach.com
City of Fort Lauderdale	949 NW 38th Street	Oakland Park, 33309	Cesar Alza	954/828-7865
City of Hallandale Beach	630 NW 2nd Street	Hallandale 33009	John Fawcett	954/457-1632 jfawcett@cohb.org
City of Hollywood	3441 Hollywood Blvd.	Hollywood 33021	Carlos Aguilera	954/967-4230 caquilera@hollywoodfl.org
City of Hollywood	1621 N. 14th Avenue	Hollywood 33022	Coy Mathis Attn: Steve Farrell	954/921-3288 cmathis@hollywoodfl.org sfarrell@hollywoodfl.org
City of Lauderhill	2101 NW 49th Avenue	Lauderhill 33313	Neil Buckeridge	954/730-2972 nbuckeridge@lauderhill-fl.gov
City Of Margate	980 NW 66 Ave.	Margate 33063	Richard Uber	954/972-0828 ruber@margatefl.com
City Of Miramar	2600 SW 66th Terrace	Miramar 33023	Jeffrey Pinter / Stephen Glatthorn	954/883-6854 jppinter@miramarfl.gov ; 954/883-5143 sglatthorn@miramarfl.gov
City of North Miami	12098 NW 11 Ave.	North Miami 33168	Wisler Pierre-Louis	305/895-9834
City of North Miami Beach*	Norwood Water Plant, 19150 NW 8th Avenue	Miami Gardens 33169	Carlos Carrazana	305/654-6460 Carlos.carrazana@Citynmb.com
Village of Palm Springs	360 Davis Road	Palm Springs 33461	Brent Watson	561/315-0674 bwatson@vpsfl.org
Village of Palm Springs	5618 Basil Drive	West Palm Beach 33415	Brent Watson	561/315-0674 bwatson@vpsfl.org
City Of Pembroke Pines	7960 Johnson Street	Pembroke Pines 33024	Juquitta Drieth	954/986-5009 juquitta.drieth@CHZM.com
City of Pompano Beach	301 NE 12th Street	Pompano Beach 33060	Jason Mraz	954/545-7006 Jason.mraz@copbfl.com
City of Sunrise	4350 Springtree Drive	Sunrise 33351	Jim Dolan	954/572-2424 jdolan@sunrisefl.gov
City of Sunrise	15450 Sludgemill Road	Davie 33331	Hugo Alagic	954/434-6900 halagic@sunrisefl.gov
City of Tamarac	7803 NW 61st Street	Tamarac 33321	Anthony Licata	954/597-3777 anthony.licata@tamarac.org
U.S. Water (City of North Lauderdale)	841 NW 71st Avenue	North Lauderdale	Rudy Perez	954/724-7071
Village of Wellington (Pebble)	1100 Wellington Trace	Wellington 33414	Sean McFarland	561/791-2465
Village of Wellington (Granular)	Water Reclamation, 11860 Pierson Rd	Wellington 33414	Bryan Gayoso	561/753-2481

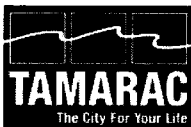


### UNIT PRICING PROVIDED IN BID AS OF JULY 11, 2017 FOR AWARDED AGENCIES

AGENCY	DELIVERY ADDRESS	ANNUAL USAGE	PRICE PER TON	FREIGHT CHARGE	TOTAL COST DELIVERED
<b>Type 1 – Pebble Lime</b>					
Broward County Dist. 1	3701 N State Road 7	4,200	\$150.94	\$101.37	\$252.31
Broward County Dist. 2	1390 NE 51 St.	6,300	\$150.94	\$101.37	\$252.31
City of Coral Springs (1)	3800 NW 85th Avenue, Coral Springs	1352	\$150.94	\$101.37	\$252.31
Town of Davie	3500 NW 76th Avenue, Hollywood	750	\$150.94	\$101.37	\$252.31
City of Deerfield Beach	290 Goolsby Blvd. – West Plant, Deerfield Beach	1872	\$150.94	\$101.37	\$252.31
City of Fort Lauderdale	949 NW 38th St., Ft. Lauderdale	11,500	\$150.94	\$101.37	\$252.31
City of Hallandale (2)	215 NW 6th Avenue, Hallandale	900	\$150.94	\$101.37	\$252.31
City of Lauderhill	2001 NW 49th Avenue, Lauderhill	1825	\$150.94	\$101.37	\$252.31
City Of Miramar	2600 SW 66th Terrace, Miramar	953	\$150.94	\$101.37	\$252.31
City of North Miami	12098 NW 11th Ave, North Miami	1,440	\$150.94	\$102.08	\$253.02
Village of Palm Springs	360 David Road, Palm Springs	600	\$150.94	\$101.37	\$252.31
Village of Palm Springs	5618 Basil Drive, West Palm Beach	600	\$150.94	\$101.37	\$252.31
City of Pompano Beach	301 NE 12th Street, Pompano Beach	2,200	\$150.94	\$101.37	\$252.31
City of Sunrise	4350 Springtree Drive, Sunrise	2,400	\$150.94	\$101.37	\$252.31
City of Sunrise	15400 Sludge Mill Road, Davie	600	\$150.94	\$101.37	\$252.31
U.S. Water (City of North Lauderdale)	841 NW 71st Avenue, North Lauderdale	650	\$150.94	\$101.37	\$252.31
Village of Wellington	1100 Wellington Terrace, Wellington	1,240	\$150.94	\$112.01	\$262.95
<b>TYPE 1A – Foundry/Rice Lime</b>					
City of Dania Beach	1201 Stirling Road, Dania Beach	320	\$150.94	\$101.37	\$252.31
City of Delray Beach	201 SW 7th St., Delray Beach	3,650	\$150.94	\$101.37	\$252.31
City of Hollywood	3441 Hollywood Blvd., Hollywood	2,400	\$150.94	\$101.37	\$252.31
City Of Margate	980 NW 66th Ave, Margate	2,000	\$150.94	\$101.37	\$252.31
City of North Miami Beach (3)	19150 NW 8th Ave, Miami Gardens	3,000	\$150.94	\$102.08	\$253.02
City Of Pembroke Pines	7960 Johnson Street, Pembroke Pines	4,500	\$150.94	\$101.37	\$252.31
City of Tamarac	7803 NW 61st Street, Tamarac	1,500	\$150.94	\$101.37	\$252.31
<b>TYPE 2 -- Hi CAL Granular (4)</b>					
Village of Wellington	11860 Pierson Rd., Wellington	20	\$150.94	132.12	\$283.06
<b>Approximate Total Annual Tonnage</b>		<b>52,572</b>			

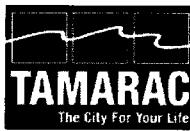
**Delivery Location Special Conditions:**

- 1 Coral Springs – Must deliver between 8:00AM and 4:00PM Monday to Friday ONLY.
- 2 Hallandale Beach – Delivery to be made by a tanker truck @ 25 Tons/shipment. Lime to be pneumatically transferred from truck to silo. Delivery must be within 3 days of order.
- 3 North Miami Beach -- At time of publication, the City of North Miami Beach was in the process of entering into an Agreement for the privatization of their Water Plant Operations. It is not certain if the new contractor will be utilizing the resultant agreement or not. Successful contractor to contact North Miami



- Beach to determine if they will be purchasing Quicklime materials from this Agreement, or if their private contractor will be purchasing on their behalf, or if no further purchases will be made using this Agreement.
- 4 Village of Wellington Utilizes Hi-Cal Granular Quicklime (Type 2). As detailed in specification for Hi-Cal Granular in Invitation for Bid 17-17B.

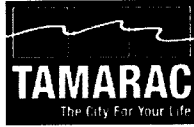
Remainder of Page Intentionally Blank

**ATTACHMENT B**      **TRUCK FUEL SURCHARGE SCALE**

Truck Fuel Surcharges are a percentage of the truck freight rate for product movement from the bidder's distribution origin to the customer's site. Truck Fuel Surcharges are subject to change quarterly.

- The percentage of the Monthly Truck Fuel Surcharge is computed by determining the Department of Energy's DOE Retail On-Highway Diesel Price – US Average index may be found at: published on the 3rd Monday of the last month of the quarter. DOE Diesel Prices may be found at the following website: <https://www.eia.gov/petroleum/gasdiesel/>
- Percentages change .5% for every \$0.05 per gallon price change

<b>DIESEL FUEL PRICE NATIONAL AVERAGE</b>	<b>FS = % OF FREIGHT RATE</b>	<b>DIESEL FUEL PRICE NATIONAL AVERAGE</b>	<b>FS = % OF FREIGHT RATE</b>
\$1.75	0.00%	\$3.00	13.00%
\$1.80	1.00%	\$3.05	13.50%
\$1.85	1.50%	\$3.10	14.00%
\$1.90	2.00%	\$3.15	14.50%
\$1.95	2.50%	\$3.20	15.00%
\$2.00	3.00%	\$3.25	15.50%
\$2.05	3.50%	\$3.30	16.00%
\$2.10	4.00%	\$3.35	16.50%
\$2.15	4.50%	\$3.40	17.00%
\$2.20	5.00%	\$3.45	17.50%
\$2.25	5.50%	\$3.50	18.00%
\$2.30	6.00%	\$3.55	18.50%
\$2.35	6.50%	\$3.60	19.00%
\$2.40	7.00%	\$3.65	19.50%
\$2.45	7.50%	\$3.70	20.00%
\$2.50	8.00%	\$3.75	20.50%
\$2.55	8.50%	\$3.80	21.00%
\$2.60	9.00%	\$3.85	21.50%
\$2.65	9.50%	\$3.90	22.00%
\$2.70	10.00%	\$3.95	22.50%
\$2.75	10.50%	\$4.00	23.00%
\$2.80	11.00%	\$4.05	23.50%
\$2.85	11.50%	\$4.10	24.00%
\$2.90	12.00%	\$4.15	24.50%
\$2.95	12.50%	\$4.20	25.00%



**AGREEMENT  
BETWEEN THE CITY OF TAMARAC  
AND  
CARMEUSE LIME AND STONE INC.**

THIS AGREEMENT is made and entered into this 23 day of August, 2017 by and between the City of Tamarac, a municipal corporation with principal offices located at 7525 N.W. 88th Ave., Tamarac, FL 33321 (the "CITY") and Carmeuse Lime and Stone Inc., a Pennsylvania Corporation duly registered as a Florida Foreign corporation with principal offices located at 11 Stanwyx Street, 21<sup>st</sup> Floor, Pittsburgh, Pennsylvania 15222 (the "Contractor") to provide for Furnishing, Delivery and Discharge of HI CAL Bulk Granular Quicklime for the City of Hollywood, Florida through the Southeast Florida Governmental Purchasing Cooperative.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

**1) The Contract Documents**

The contract documents consist of this Agreement, Bid Document No. 17-22B, "Furnish, Deliver and Discharge Quicklime", including all conditions therein, (General Terms and Conditions, Special Conditions and/or Special Provisions), drawings, Technical Specifications, all addenda, the Contractor's bid/proposal included herein, and all modifications issued after execution of this Agreement; and Contract Attachment A, "Participating Agencies and Unit Pricing Provided in Bid", which is a schedule of individual agencies participating in the bid and delivered unit pricing for individual delivery locations, and Attachment B, "Trucking Fuel Charge Scale". These contract documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein. In the event that there is a conflict between Bid Document No. 17-22B, "Furnish Deliver and Discharge Quicklime", as issued by the City, and the Contractor's Proposal, Bid Document No. 17-22B, as issued by the City shall take precedence over the Contractor's Proposal. Furthermore, in the event of a conflict between this document and any other contract documents, this Agreement shall prevail.

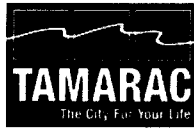
**2) The Work**

**2.1.** The Contractor shall perform all work for the City required by the contract documents as set forth below:

**2.1.1** Contractor shall furnish all labor, materials, and equipment necessary to Furnish, Deliver and Discharge Quicklime in accordance with the Technical Specifications, terms and conditions contained in Bid Document 17-22B, "Furnish, Deliver and Discharge of Quicklime" for the City of Hollywood, Florida, through the City of Tamarac on behalf of the Southeast Florida Governmental Purchasing Cooperative for Type 2 – HI CAL Granular Quicklime.

**2.1.2** Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.

**2.1.3** Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

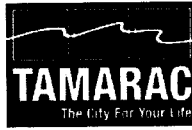


- 2.1.4** Contractor shall be required to complete the "Contractor Pass Request Form" (See attached Appendix A to Bid Document No. 17-22B), with photo identification of all personnel authorized to be on premises at City delivery sites. This form will be sent to the awarded vendor(s) with the notification of award letter.
- 2.1.5** Personnel additions and/or deletions shall be reported to the City's designated representative in writing, via fax to a number to be provided by the using agency, within twenty four (24) hours of the personnel change, by modification of the names submitted on the original Contractor Pass Request Form.
- 2.1.6** All personnel shall check-in with the Security Guard or Operator on duty immediately upon arrival at any delivery location. Photo identification, purpose of visit, and name of City staff contact, shall be required for entry.
- 2.1.7** Contractor shall ensure that only authorized Contractor employees and/or authorized City personnel shall have access to Contractor/City vehicles, work site, equipment, work products, reports, electronic data and any/all other information pertaining to the City. Contractor shall not admit any unauthorized personnel onto any work site. Contractor will not release, discuss or share any information on systems, equipment and/or operations, to any non-City personnel.
- 2.1.8** Upon leaving premises, all personnel shall be required to check out with the Security Guard or Operator on duty.

### 3) Insurance

- 3.1.** Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as specified in the original bid document or as required by the City's Risk and Safety Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, Builder's Risk and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk and Safety Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this agreement.
- 3.2.** Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies. Insurance limits are outlined below:

Insurance Requirements		
Line of Business/ Coverage	Occurrence	Aggregate
	Limits	
<b>Commercial General Liability Including:</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>
Premises/Operations		
Contractual Liability		
Personal Injury		
Explosion, Collapse, Underground Hazard		
Products/Completed Operation		
Broad Form Property Damage		
Cross Liability and Severability of Interest Clause		
<b>Automobile Liability</b>	<b>\$1,000,000.00</b>	<b>\$1,000,000.00</b>
<b>Workers' Compensation &amp; Employer's Liability</b>	<b>Statutory</b>	

**4) Term**

The term of this Agreement shall be for an initial three (3) year period, beginning November 1, 2017 through October 31, 2020. The City reserves the right to renew this Agreement for three (3) additional one (1) years periods subject to the Contractor's acceptance, satisfactory performance and determination that renewal will be in the best interest of the City.

**5) Contract Sum**

The Contract Sum for the above work for entities listed in Contract Attachment A "Participating Agencies and Unit Pricing Provided in Bid", shall be based on delivered cost per ton. The Contract sum includes all labor, materials and freight charges for the job also known as Bid No. 17-22B, "Furnish, Deliver, and Discharge Quicklime" for the Southeast Florida Government Purchasing Cooperative entities listed in Contract Attachment A – Participating Agencies and Unit Pricing. All Terms and Conditions, except product price, freight, transfer, and rail and truck fuel surcharges shall remain firm through the term of the contract,

**5.1** Contract Pricing shall be based on delivered cost per ton. The Contract sum includes all labor, materials and freight charges. Initial pricing shall be held firm from November 1, 2017 through December 31, 2017, and shall be based on the actual pricing adjustment submitted in October, 2017. Pricing changes will thereafter be allowable on a quarterly basis in accordance with Section 5.3, "Escalation / De-escalation" shown herein. Attachment A, "Participating Agencies and Unit Pricing Provided in Bid" provides the unit pricing submitted as of the bid opening date of July 11, 2017.

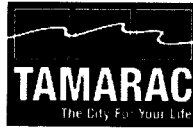
**5.2** In consideration of fluctuations in fuel prices, the City will allow rail and trucking fuel surcharges during the term of the contract.

**5.2.2** Rail Surcharge – The rail fuel surcharge rate will be based on actual contracts, invoices or published rates of the contractor's rail carrier. Contractor shall provide documentation regarding the rail carrier's pricing as a part of the request for an adjustment to the rail surcharge. No surcharge will be applied on top of another one. The Bidder should provide a rail fuel surcharge schedule as part of their bid submittal in the area provided in Appendix B herein.

**5.2.3** Trucking Surcharge - The truck fuel surcharge rate will be based on the Trucking Fuel Surcharge Scale contained in Appendix B herein, which shall be determined by referencing the Retail On-Highway Diesel Price – U.S. Average, as published by the U.S. Department of Energy, Energy Information Administration (DOE) for the third Monday of the final month of each quarter. The truck fuel surcharge will be applied to the base contract price per ton of quicklime transported effective with the start of the next quarter. No surcharge will be applied on top of another one. The bidder shall utilize the trucking fuel surcharge scale included in Attachment B, "Trucking Surcharge Scale" as a basis for adjustment, and surcharge adjustments will be based on that scale. The DOE Retail On-Highway Diesel Price – US Average index may be found at: [http://tonto.eia.doe.gov/oog/info/wohdp/diesel\\_detail\\_report\\_combined.asp](http://tonto.eia.doe.gov/oog/info/wohdp/diesel_detail_report_combined.asp),

**5.3 Escalation/De-escalation:**

**5.3.1** The City will accept price adjustments on a quarterly basis on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup> of each year. The Contractor must submit sufficient documentation to be given consideration for a price increase, and must pass-on a price decrease when the Contractor's costs are reduced. Approved documentation includes, but is not limited to published U.S. Department of Energy (DOE) reports on coal costs, Platt's Coal Index, U.S. Bureau of Labor Statistics (BLS) reports on Producer Price Index (PPI) for all commodities, U.S.



Energy Information Administration WTI publications on spot crude oil prices, BLS Electric Power Generation, Transmission and Distribution Index, BLS Crushed and Broken Limestone Index, BLS mining Machinery and Equipment Index; and copies of vendor monthly internal cost reports and/or actual invoices.

**5.3.2** Rail and Truck freight charges and changes for transfer costs require written verification from vendor's freight and transfer subcontractors, provided to the Purchasing & Contracts Division prior to initial contract term expiration of the Agreement. All Rail and Truck fuel surcharges will be applied initially on November 1, 2017, subject to change as detailed in Section 5.1 herein.

**5.3.3** The City acknowledges that Contractor's rail and truck carriers adjust fuel surcharges monthly. The Contractor will apply fuel surcharges for each quarter based on the amount of the rail and truck fuel surcharges in effect for the month preceding the quarterly price change as calculated in accordance with Section 5.2 of this Agreement, utilizing Appendix B to the original bid #17-22B. At the end of each quarter, the Contractor will process a "true up" by comparing the actual monthly rail and truck fuel surcharges for the quarter to the rail and truck fuel surcharges implemented at the time of the quarterly price change. Based on this comparison, the Contractor will issue the City a credit or debit that represents the variance.

**5.3.4** Cost adjustments, in all cases, shall reflect only a direct pass-through of costs, and no changes to the Contractor's profit margin shall be permitted. The City and the Contractor may also utilize recognized government/industry indices or combination of indices to be mutually agreed upon by the City and Contractor, when determining price increases.

## **6) Payments**

A monthly payment will be made for work that is completed, accepted and properly invoiced. The City shall pay the Contractor for work performed subject to the specifications of Bid 17-22B. All payments shall be governed by the Local Government Prompt Payment Act, F.S., Part VII; Chapter 218.

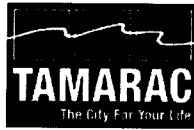
## **7) Conditions of Material**

All materials and products supplied by the Bidder in conjunction with this bid shall conform to the specifications of the bid. The City reserves the right to return the product to the Bidder and require the delivery of new product at no cost to the City.

## **8) Indemnification**

**8.1** The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.





**8.2** Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

- i. The Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.
- ii. City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Contractor under the indemnification agreement.

**8.3** The City and Contractor recognize that various provisions of this Agreement, including but not limited to this Section, provide for indemnification by the Contractor and requires a specific consideration be given there for. The Parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Contractor. Furthermore, the City and Contractor understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the City's and the Contractor's responsibility to indemnify.

**8.4** Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

## **9) Non-Discrimination & Equal Opportunity Employment**

During the performance of the Contract, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability if qualified. The Contractor will take affirmative action to ensure that employees and those of its subcontractors are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity or expression, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor and its subcontractors shall agree to post in conspicuous places, available to its employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees that he/she will ensure that all subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

## **10) Independent Contractor**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered



under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**11) Assignment and Subcontracting**

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the city.

**12) Notice**

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

**CITY**

City Manager  
City of Tamarac  
7525 N.W. 88th Avenue  
Tamarac, FL 33321

With a copy to City Attorney at the following address:

Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Blvd., Suite 200  
Fort Lauderdale, FL 33308

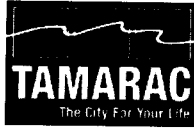
**CONTRACTOR**

Carmeuse Lime and Stone, Inc.  
11 Stanwyx Street, 21<sup>st</sup> Floor  
Pittsburgh, PA 15222  
Attn: Jack Fahler, Vice President of Sales &  
Marketing  
(412) 995-1053 Fax: (412) 995-5585

**13) Termination**

**13.1 Termination for Convenience:** This Agreement may be terminated by the City for convenience, upon seven (7) days of written notice by the terminating party to the other party for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the city against loss pertaining to this termination.

**13.2 Default by Contractor:** In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the material terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure.

**14) Uncontrollable Forces**

**14.1** Neither the City nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

**14.2** Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

**15) Agreement Subject to Funding**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Tamarac in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

**16) Venue**

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

**17) Signatory Authority**

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

**18) Severability; Waiver of Provisions**

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**19) Merger; Amendment**

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

**20) No Construction Against Drafting Party**

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

**21) Public Records**

**21.1** The City of Tamarac is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

**21.1.1** Keep and maintain public records required by the City in order to perform the service;

**21.1.2** Upon request from the City's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

**21.1.3** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.

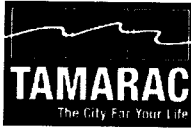
**21.1.4** Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

**21.2** During the term of the contract, the Contractor shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City's Auditor. The Contractor agrees to make available to the City's Auditor, during normal business hours and in Broward, Dade or Palm Beach Counties, all books of account, reports and records relating to this contract.

**22) Public Records Custodian**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
7525 NW 88TH AVENUE  
ROOM 101  
TAMARAC, FL 33321  
(954) 597-3505  
CITYCLERK@TAMARAC.ORG**



IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF TAMARAC, signing by and through its Mayor and City Manager, and CONTRACTOR, signing by and through its Vice President of Sales and Marketing duly authorized to execute same.

## CITY OF TAMARAC

[Signature]  
Harry Dressler, Mayor

August 23 2017  
Date

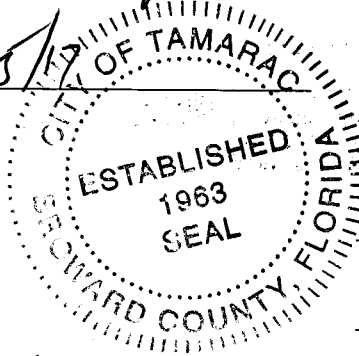
[Signature]  
Michael C. Cernech, City Manager

8-24-17  
Date

## ATTEST:

[Signature]  
Patricia A. Teufel, CMC  
City Clerk

8/25/17  
Date



Approved as to form and legal sufficiency:

[Signature]  
City Attorney

8/22/17  
Date

## ATTEST:

[Signature]  
Signature of Corporate Secretary

MARY D. COLIN  
Type/Print Name of Corporate Secy.

(CORPORATE SEAL)

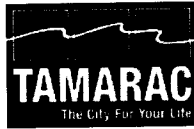
## CARMEUSE LIME AND STONE INC.

Company Name

[Signature]  
Signature

Jack Fahler, Vice President of Sales & Marketing

7/26/17  
Date

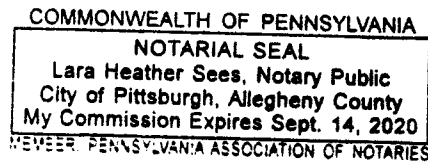


## CORPORATE ACKNOWLEDGEMENT

STATE OF Pennsylvania :  
 COUNTY OF Allegheny : SS

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Jack Fahler, Vice President of Sales and Marketing for Carneuse Lime and Stone, Inc., a Pennsylvania Corporation duly registered as a Florida Foreign Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 26th day of July, 2017



[Signature]  
 Signature of Notary Public  
 State of Pennsylvania  
LARA HEATHER SEES  
 Print, Type or Stamp  
 Name of Notary Public



Personally known to me or  
 Produced Identification

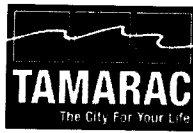
personally known  
 Type of I.D. Produced



DID take an oath, or



DID NOT take an oath.

**ATTACHMENT A****PARTICIPATING AGENCIES AND UNIT PRICING PROVIDED IN BID**

Below is a list of the agencies participating in this Agreement and the respective delivery location:

AGENCY	DELIVERY ADDRESS	CITY/STATE/ZIP	CONTACT	PHONE / E-MAIL
City of Hollywood	1621 N. 14 <sup>th</sup> Avenue	Hollywood 33022	Coy Mathis Attn: Steve Farrell	954/921-3288 cmathis@hollywoodfl.org sfarrell@hollywoodfl.org

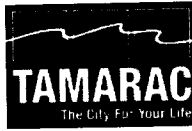
**UNIT PRICING PROVIDED IN BID AS OF JULY 11, 2017 FOR AWARDED AGENCIES**

AGENCY	DELIVERY ADDRESS	ANNUAL USAGE	PRICE PER TON	FREIGHT CHARGE	TOTAL COST DELIVERED
<b>TYPE 2 -- Hi CAL Granular (4)</b>					
City of Hollywood	Wastewater, 1621 N. 14 <sup>th</sup> Ave, Hollywood	5500	\$175.00	\$89.85	\$264.85
<b>Approximate Total Annual Tonnage</b>		<b>5500</b>			

**Delivery Location Special Conditions:**

- 4 City of Hollywood Utilizes Hi-Cal Granular Quicklime (Type 2). As detailed in specification for Hi-Cal Granular in Invitation for Bid 17-17B.

Remainder of Page Intentionally Blank

**ATTACHMENT B****TRUCK FUEL SURCHARGE SCALE**

Truck Fuel Surcharges are a percentage of the truck freight rate for product movement from the bidder's distribution origin to the customer's site. Truck Fuel Surcharges are subject to change quarterly.

- The percentage of the Monthly Truck Fuel Surcharge is computed by determining the Department of Energy's DOE Retail On-Highway Diesel Price – US Average index may be found at: published on the 3rd Monday of the last month of the quarter. DOE Diesel Prices may be found at the following website: <https://www.eia.gov/petroleum/gasdiesel/>
- Percentages change .5% for every \$0.05 per gallon price change

<b>DIESEL FUEL PRICE NATIONAL AVERAGE</b>	<b>FS = % OF FREIGHT RATE</b>	<b>DIESEL FUEL PRICE NATIONAL AVERAGE</b>	<b>FS = % OF FREIGHT RATE</b>
\$1.75	0.00%	\$3.00	13.00%
\$1.80	1.00%	\$3.05	13.50%
\$1.85	1.50%	\$3.10	14.00%
\$1.90	2.00%	\$3.15	14.50%
\$1.95	2.50%	\$3.20	15.00%
\$2.00	3.00%	\$3.25	15.50%
\$2.05	3.50%	\$3.30	16.00%
\$2.10	4.00%	\$3.35	16.50%
\$2.15	4.50%	\$3.40	17.00%
\$2.20	5.00%	\$3.45	17.50%
\$2.25	5.50%	\$3.50	18.00%
\$2.30	6.00%	\$3.55	18.50%
\$2.35	6.50%	\$3.60	19.00%
\$2.40	7.00%	\$3.65	19.50%
\$2.45	7.50%	\$3.70	20.00%
\$2.50	8.00%	\$3.75	20.50%
\$2.55	8.50%	\$3.80	21.00%
\$2.60	9.00%	\$3.85	21.50%
\$2.65	9.50%	\$3.90	22.00%
\$2.70	10.00%	\$3.95	22.50%
\$2.75	10.50%	\$4.00	23.00%
\$2.80	11.00%	\$4.05	23.50%
\$2.85	11.50%	\$4.10	24.00%
\$2.90	12.00%	\$4.15	24.50%
\$2.95	12.50%	\$4.20	25.00%