**RESOLUTION NO.** R-2012-139

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI AND LHOIST NORTH AMERICA OF ALABAMA, LLC, TO PIGGYBACK A CONTRACT WITH THE CITY OF TAMARAC, FLORIDA, FOR THE DELIVERY AND DISCHARGE OF QUICKLIME, AS REQUIRED FOR THE OPERATIONS OF THE WINSON WATER TREATMENT PLANT, IN ACCORDANCE WITH INVITATION FOR BID 11-25B - FURNISH, DELIVER & DISCHARGE OF QUICKLIME; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.**

**WHEREAS**, on July 6, 2011, the City of Tamarac, Florida ("Tamarac"), issued ***Invitation for Bid 11-25B - Furnish, Deliver & Discharge of Quicklime*** ("IFB"), seeking a qualified bidder to furnish, deliver and discharge quicklime, in accordance with the technical specifications, terms and conditions contained in the IFB ("Services"); and

**WHEREAS**, in response to the IFB, Lhoist North America of Alabama, LLC ("Contractor"), was competitively selected and awarded a contract pursuant to Tamarac Resolution R-2011-86; and

**WHEREAS**, on October 23, 2007, the Mayor and City Council of the City of North Miami ("City"), adopted Ordinance No. 1244, authorizing the City Manager to approve the purchase of supplies, goods and/or services from current contracts of other municipalities and governmental entities ("piggyback"), such as Tamarac; and

**WHEREAS**, the City Manager has identified the requirement for Services as an essential element in the provision of potable water to all City-water consumers; and

**WHEREAS**, Contractor is willing to provide Services to the City at the same favorable terms and rates extended to Tamarac; and

**WHEREAS**, the City Manager respectfully requests that the Mayor and City Council approve this Agreement, piggybacking the Tamarac contract to continue to obtain Services for

the City's water plant operations, using the most cost effective means available to the City without compromising the quality of water utility services.

**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1.** **Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to execute an agreement, in substantially the attached form, between the City of North Miami and Lhoist North America of Alabama, LLC, to piggyback a contract with the City of Tamarac, Florida, for the delivery and discharge of quicklime, as required for the operations of the Winson Water Treatment Plant, in accordance with Invitation for Bid 11-25B - Furnish, Deliver & Discharge of Quicklime.

**Section 2.** **Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by a 4-1 vote of the Mayor and City Council of the City of North Miami, Florida, this 13 day of November, 2012.

ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Mayor Pierre

Seconded by: Vice Mayor Steril

**Vote:**

| | | | | |
|---|---|---|---|---|
| Mayor Andre D. Pierre, Esq. | x | (Yes) | | (No) |
| Vice Mayor Marie Erlande Steril | x | (Yes) | | (No) |
| Councilperson Michael R. Blynn, Esq. | x | (Yes) | | (No) |
| Councilperson Scott Galvin | | (Yes) | x | (No) |
| Councilperson Jean R. Marcellus | x | (Yes) | | (No) |

# CITY OF NORTH MIAMI
# PROFESSIONAL SERVICES AGREEMENT
# (Quicklime Procurement Services #65-10-11PB – Piggyback City of Tamarac)

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is made and entered into this _____ day of _____, 2012 by and between the **City of North Miami**, a Florida municipal corporation, having its principal office at 776 NE 125th Street, North Miami, FL 33161 ("City") and **Lhoist North America of Alabama, LLC**, a foreign limited liability company registered and authorized to do business in the State of Florida, having its principal office at 3700 Hulen Street, Ft. Worth, TX 76107 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties".

## RECITALS

**WHEREAS**, on July 6, 2011, the City of Tamarac, Florida ("Tamarac"), issued ***Invitation for Bid 11-25B – Furnish, Deliver & Discharge of Quicklime*** ("IFB"), seeking a qualified bidder to furnish, deliver and discharge quicklime, in accordance with the technical specifications, terms and conditions contained in the IFB ("Services"); and

**WHEREAS**, the Contractor submitted its bid in response to the IFB and was competitively selected as having established the rates, qualifications, and references most advantageous to Tamarac; and

**WHEREAS**, on August 24, 2011, the Mayor and Council of Tamarac passed Resolution R-2011-86, approving the selection of Contractor and authorized the execution of a contract for provision of Services; and

**WHEREAS**, on October 23, 2007, the Mayor and City Council of the City of North Miami, adopted Ordinance 1244, which authorizes the City Manager to approve the purchase of supplies, goods and/or services from current contracts of other governmental entities ("piggyback"), such as Tamarac; and

**WHEREAS**, Contractor is willing to provide Services to the City at the same favorable rates and terms extended to Tamarac; and

**WHEREAS**, the City Manager has determined that it is in the City's best interest to piggyback the Tamarac contract for the purchase, delivery and discharge of chemical quicklime as required for the proper operation of the City's water plant.

**NOW THEREFORE**, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

## ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

## ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 Tamarac ***Invitation for Bid 11-25B – Furnish, Deliver & Discharge of Quicklime***, attached hereto by reference;

2.1.2 Lhoist North America of Alabama, LLC, price list, dated October 1, 2012, attached hereto as Exhibit A;

2.1.3 Any additional documents which are required to be submitted in the provision of Services.

## ARTICLE 3 –TERM OF AGREEMENT

3.1 Subject to authorized adjustments, the Initial Term of this Agreement shall be a period of two (2) years, commencing on November 1, 2012 through October 31, 2014 ("Initial Term").

3.2 Following the Initial Term, the City shall have three (3) options to renew this Agreement in writing, on a year-by year basis, with the same terms and conditions contained herein.

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Services or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

## ARTICLE 4 - COMPENSATION

4.1 The City agrees to pay Contractor an amount not to exceed Six Hundred Fifty Thousand Dollars and no cents ($650,000.00), for the provision of Services throughout the Initial Term.

## ARTICLE 5 - SCOPE OF SERVICES

5.1 Contractor shall provide all labor, supervision, materials, equipment, tools, services and expertise necessary for the completion of Services, in accordance to the special terms and conditions specified in the Contract Documents.

5.2 Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.3 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

## ARTICLE 6 - INDEPENDENT CONTRACTOR

6.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering services to the City under this Agreement.

6.2 Contractor agrees and understands that: (i) any and all Subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of Subcontractors for any of the work related to this Agreement shall be borne solely by Contractor.

## ARTICLE 7 - CONFLICTS OF INTEREST

7.1 The Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

7.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly with Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

## ARTICLE 8 - DEFAULT

8.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within ten (10) business days after receiving Notice of Default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

## ARTICLE 9- NOTICES

9.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when delivered by personal service, faxed, or dispatched by mail or certified mail, addressed as follows:

| | |
|---|---|
| To Contractor: | Lhoist North America of Alabama, LLC<br>Attn: John L. Thompson, Fla. Sales Manager<br>3700 Hulen Street<br>Ft. Worth, TX 76107<br>Phone: (877) 644-9010 |
| To City: | City of North Miami<br>Attn: City Manager<br>776 N.E. 125th Street<br>North Miami, Florida 33161 |
| With a copy to: | City Attorney<br>City of North Miami<br>776 N.E. 125th Street<br>North Miami, Florida 33161 |

9.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

9.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

## ARTICLE 10 - PUBLIC RECORDS

10.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

## ARTICLE 11 - INDEMNIFICATION

11.1 Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, subcontractors, employees and managers in the performance of the Services under this Agreement.

11.2 Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, subcontractors, suppliers, or other persons directly or indirectly employed by its subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between City and any such subcontractor, supplier or other

person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

11.3 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

## ARTICLE 12 - INSURANCE

12.1 Prior to commencing Services, the Contractor shall submit certificates of insurance evidencing the required coverage under the Contract Documents and specifically providing that the City is an additional named insured with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence Services under this Agreement until after Contractor has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by the City.

## ARTICLE 13 - FORCE MAJEURE

13.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

## ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

14.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

14.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws,

or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

14.4 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

14.5 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

14.6 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

14.7 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

14.8 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

14.9 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

14.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

14.11 This Agreement shall be biding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

14.12 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

14.13 All other terms and conditions set forth in the Contract Documents which have not been modified by this Agreement, shall remain in full force and effect.

14.14 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

By: _____

Print Name: _____

Title: _____

Date: _____

Lhoist North America of Alabama, LLC, a foreign limited liability company:

"**Contractor**"

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:

By: _____
Michael A. Etienne
City Clerk

City of North Miami, a Florida municipal corporation: "**City**"

By: _____
Stephen E. Johnson
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Regine M. Monestime
City Attorney

# Southeast Florida Governmental Purchasing Cooperative Group

# CONTRACT AWARD

| | |
|---|---|
| BID/RFP NO.: | 11-25B Effective 11/01/11 |
| DESCRIPTION/TITLE: | Furnish, Deliver and Discharge of Quicklime |
| CONTRACT PERIOD: | November 1, 2011 -- October 31, 2014 |
| TERM OF CONTRACT: | 3 Years |
| RENEWALS OPTIONS: | 3 @ 1 Year |

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SECTION #1 - VENDOR AWARD

All agencies except City of Hollywood High Cal Granular Lime:

| | |
|---|---|
| Vendor Name: | Chemical Lime Company of Alabama, LLC |
| Vendor Address: | 3700 Hulen St.<br>Ft. Worth, TX 76107 |
| Submit Orders to: | 4720 Cleveland Heights Boulevard, Suite 203<br>Lakeland, FL 33813 |
| Contact: | John L. Thompson |
| Phone: | (877) 644-9010<br>Orders: (800) 695-5657 |
| Fax: | (863) 644-9030 |
| Cell/Pager: | (863) 698-2483 |
| Email Address: | John.Thompson@chemicallime.com |
| Website: | www.chemicallime.com |
| FEIN: | 63-1002780 |

City of Hollywood High Cal Granular Lime:

| | |
|---|---|
| Vendor Name: | Carmeuse Lime Sales Corporation |
| Vendor Address: | 11 Stanwix St., 11th Floor<br>Pittsburgh, PA 15222 |
| Contact: | Bruce D. Routhieaux |
| Phone: | (412) 995-5500 |
| Fax: | (412) 995-5515 |
| Cell/Pager: | N/A |
| Email Address: | salesinfo@carmeusena.com |
| Website: | www.carmeuse.com |
| FEIN: | 34-1053721 |

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SECTION #2 – AWARD/BACKGROUND INFORMATION

| | | |
|---|---|---|
| Award Date: | August 24, 2011 | |
| Resolution/Agenda Item No.: | R-2011-86 | |
| Insurance Required: | X Yes | ___ No |
| Performance Bond Required: | ___ Yes | X No |

## SECTION #3 - PROCURING AGENCY

| | |
|---|---|
| **Agency Name:** | **City of Tamarac** |
| **Agency Address:** | **7525 NW 88th Ave.**<br>**Tamarac, FL 33321** |
| **Agency Contact:** | **Keith K. Glatz, CPPO** |
| **Telephone:** | **(954) 597-3567** |
| **Facsimile:** | **(954) 597-3565** |
| **Email:** | **keith.glatz@tamarac.org** |