

NORTH CAROLINA

SUPPLIER AGREEMENT

BRUNSWICK COUNTY

THIS SUPPLIER AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County”), party of the first part, and Shannon Chemical Corporation, a Pennsylvania corporation, (hereinafter referred to as “Supplier”), party of the second part.

WITNESSETH:

1. GOODS; PRICING

The goods to be purchased under this Agreement (hereinafter referred to collectively as “Goods”) and the agreed upon price(s) for said Goods are set forth on Exhibit “A” attached hereto.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. TERM OF AGREEMENT; TERMINATION

The term of this Agreement begins on 10/02/2023 (the “Effective Date”) and continues in effect until 06/30/2024, unless sooner terminated as provided herein. County may terminate this Agreement at any time without cause by giving thirty (30) days’ written notice to Supplier. As soon as practicable after receipt of a written notice of termination without cause, Supplier shall submit a statement to County showing in detail any Goods purchased under this Agreement for which payment has not been made through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Supplier shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Supplier if Supplier becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Supplier, or has a receiver or trustee appointed for substantially all of its property, or if Supplier allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

3. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by County to make payments under this Agreement for a given fiscal year, County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, County will promptly notify Supplier of the non-appropriation, and this Agreement will be

terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

4. COMPENSATION

- (1) **TOTAL CHARGES.** County agrees to pay the price(s) for the Goods specified in the Price List or other document set forth on Exhibit "A" or as set out above. These prices constitute the maximum total charges payable to Supplier for the Goods.
- (2) **PRICE PROTECTION.** Supplier warrants that the prices extended to County under this Agreement are comparable to or better than those being offered to any other customer purchasing similar quantities of the same or similar Goods. During the term of this Agreement, if Supplier enters into a contract with another entity that provides more favorable pricing and terms than this Agreement, then County shall be promptly notified of such changes to the pricing, and Supplier shall be obligated to provide the same to County for subsequent purchases. During the term of this Agreement, if lower prices and rates become effective for like quantities of the Goods through a reduction in list prices, promotional discounts or other circumstances, then County shall be promptly notified of such changes in pricing, and County must be given immediate benefit of such lower prices and rates.
- (3) **PRICE ADJUSTMENTS.** The price(s) stated herein shall be firm for the term of this Agreement.
- (4) **INVOICES.** Unless otherwise specified, Supplier shall submit monthly invoices to County and include a complete list all Goods purchased under the terms of this Agreement. Invoices shall only be submitted after Acceptance of the Goods as set forth herein. County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Supplier, County shall inform Supplier in writing of the disputed charges. Once the dispute has been resolved, Supplier shall re-invoice County for the previously disputed charges, and, per any resolution between County and Supplier, County shall pay those charges in full at that time. No advance payment shall be made for any Goods supplied by Supplier pursuant to this Agreement.
- (5) **PURCHASING VOLUME.** Supplier hereby acknowledges that this Agreement does not guarantee that any minimum or maximum purchases will be made. Orders will only be placed when County identifies a need.

5. ACCEPTANCE OF GOODS

The Goods delivered under this Agreement shall remain the property of Supplier until acceptance by County. Acceptance of Goods shall occur within fifteen (15) days after receipt by County unless:

- (1) County has notified Supplier of a defect within such time period. In the event any Goods are defective, County shall be entitled to terminate the order for such Goods upon written notice to Supplier and return such Goods to Supplier at Supplier's expense.
- (2) The parties have agreed to provide County with a trial use period for acceptance verification or testing, in which case acceptance of the Goods shall occur upon the successful completion of the acceptance verification or testing period and any agreed upon trial use period.

6. INDEPENDENT CONTRACTOR

Both County and Supplier agree that Supplier shall act as an independent contractor and shall not represent itself as an agent or employee of County for any purpose in the performance of its duties under this Agreement. Accordingly, Supplier shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, unemployment insurance taxes, and any other taxes or business license fees as required. Supplier shall not be entitled to participate in any plans, arrangements or distributions by County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

7. SUPPLIER REPRESENTATIONS

- (1) Supplier is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- (2) Supplier has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Supplier to enter into and perform its obligations under this Agreement;
- (4) In connection with Supplier's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses;
- (5) Supplier shall not violate any agreement with any third party by entering into or providing the Goods under this Agreement;

- (6) Supplier will provide all Goods in conformity with the specifications and requirements of this Agreement;
- (7) Supplier will provide all Goods free and clear of all liens and encumbrances;
- (8) The Goods provided by Supplier under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including without limitation non-compete agreements); and
- (9) Supplier shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by County with respect to rules, regulations, policies and security procedures applicable to work on County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

8. WARRANTIES

- (1) **SPECIFIC WARRANTIES.** In addition to any other warranties set forth herein, Supplier shall represent, warrant and covenant the specific warranties for the Goods attached hereto and incorporated herein.
- (2) **ASSIGNMENT OF WARRANTIES FOR THIRD PARTY PRODUCTS.** Without limiting Supplier's obligation to provide warranty or maintenance services, Supplier hereby assigns to County all of Supplier's warranties covering any third-party product delivered under this Agreement. Supplier will provide copies of all said warranties to County upon delivery of the covered Goods.

9. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Supplier shall be solely responsible for any damage to or loss of County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Supplier. In the event that Supplier causes damage to County's equipment or facilities, Supplier shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

10. NON-ENDORSEMENT AND PUBLICITY

County is not endorsing Supplier or the Goods supplied under this Agreement, and Supplier is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Supplier may list County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

11. NON-EXCLUSIVITY

Supplier acknowledges that County is not obligated to contract solely with Supplier for the Goods covered under this Agreement.

12. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Supplier hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

13. DEBARMENT

Supplier hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Supplier must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

14. INDEMNIFICATION

Supplier shall defend, indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against County or which County must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Supplier, its employees or agents. Supplier further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Supplier shall be fully responsible to County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

15. INSURANCE

Supplier shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. Supplier shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Supplier shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

16. WORKERS' COMPENSATION

To the extent required by law, Supplier shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Supplier is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Supplier shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Supplier's obligations under this Agreement.

Supplier agrees to furnish County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

17. REMEDIES

- (1) **RIGHT TO COVER.** If Supplier fails to provide any Goods for any reason, due to no fault of County, County may employ such means as it may deem advisable and appropriate to obtain the Goods from a third party until the matter is resolved and Supplier is again able to provide the respective Goods under this Agreement.
- (2) **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Supplier fails to perform under this Agreement until such breach has been fully cured.
- (3) **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- (5) **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Supplier, notwithstanding anything to the contrary in this Agreement, Supplier agrees that it will not terminate this Agreement or suspend or limit the supply of any Goods or warranties on such Goods, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

18. TAXES

Supplier shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Supplier shall substantiate, on demand by County, that all taxes and other charges are being properly paid.

19. HEALTH AND SAFETY

Supplier shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the supply of Goods. Supplier shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with the supply of Goods.

20. NON-DISCRIMINATION IN EMPLOYMENT

Supplier shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Supplier shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Supplier is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Supplier may be declared ineligible for further County agreements.

21. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Supplier understands that it is a requirement of this Agreement that Supplier and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Supplier agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Supplier shall require its subcontractors to do the same. Upon request, Supplier agrees to provide County with an affidavit of compliance or exemption.

22. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- a. in the public domain through no fault of the Recipient;
- b. within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- c. lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- d. independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- e. disclosed with the prior written consent of the Discloser; or
- f. required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser's sole expense.

23. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

24. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

25. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

26. GOVERNMENTAL IMMUNITY

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

27. NON-WAIVER

Failure by County at any time to require the performance by Supplier of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

28. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

29. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

30. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

31. AMENDMENTS

No amendments or changes to this Agreement, or additional Statements of Work, shall be valid unless in writing and signed by authorized agents of both Supplier and County.

32. NOTICES

- (1) **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.

(2) **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.

(3) **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422

ii. For the Supplier: Shannon Chemical Corporation
P.O. Box 376
Malvern, PA 19355

33. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

SHANNON CHEMICAL CORPORATION

DocuSigned by:
By: Daniel Flynn
CAE4FB1EDBB4435...

Printed Name: Daniel Flynn

Title: President

Date: 9/22/2023

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

EXHIBIT "A"
GOODS/PRICE LIST

Supplier shall supply Polyphosphate/Ortho Blend (SLI-5250) to County's 211 Water Treatment Plant at price of \$0.824 per pound.