

# ***CITY OF WOOSTER***

**538 N MARKET STREET  
WOOSTER, OH 44691**

## **PROJECT NAME:**

**Purchase of Polyphosphate**

**Bids due 12:00 noon, Wednesday, December 12, 2023**

**Please provide the following information to facilitate the Bid Opening and processing of purchase orders and other communications:**

**Company:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **County:** \_\_\_\_\_ **State:** \_\_\_\_\_

**Zip Code:** \_\_\_\_\_

**Federal Identification or Social Security number:** \_\_\_\_\_

**Telephone number of business office:** \_\_\_\_\_

**Telephone number of person submitting the bid:** \_\_\_\_\_

**Fax:** \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

**CITY OF WOOSTER, OHIO**  
**PURCHASE OF POLYPHOSPHATE**

**SECTION A**

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**CITY OF WOOSTER, OHIO  
PURCHASE OF POLYPHOSPHATE**

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**CITY OF WOOSTER, OHIO**  
**PURCHASE OF POLYPHOSPHATE**

**SECTION B**  
**LEGAL NOTICE**

## LEGAL NOTICE

Sealed bids will be received by the Contract Specialist on behalf of the Director of Administration, City of Wooster, State of Ohio, at the office of said Director, 538 N. Market Street, P.O. Box 1128, Wooster, OH 44691 until twelve o'clock, noon, Tuesday, December 12, 2023 for furnishing Polyphosphate, in accordance with the specifications on file in said office.

Each bid must contain the full name of every person or company interested in same, and be accompanied by a bid bond or a certified check in the amount of 10% of the bid price as a guaranty that if the bid is accepted, a contract will be entered into and its performance secured.

Details regarding the specifications and requirements along with bid documents can be found at the City of Wooster website <https://www.woosteroh.com/engineering/bidding-information>. All interested parties must complete the contact information form through the City's ViewPoint website <https://woosteroh.viewpointcloud.com/categories/1072/record-types/6496> in order for bids to be considered. Bidders are required to use the forms which will be furnished on application. The right is reserved to reject any and all bids, and/or alternate unit prices.

Bids shall be placed into a sealed envelope and addressed to: Amanda McClain, Contract Specialist, 538 N. Market Street, Wooster, Ohio 44691. Only bids that meet the City of Wooster's specifications will be considered.

Contact the Water Production Facility at 330-263-5284 for all questions and requests for additional information.

Bidders are required to use the forms that will be furnished on application. The right is reserved to reject any and all bids, and/or alternate unit prices.

By order of the Director of Administration.

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Joel Montgomery, P.E.  
Director of Administration

Advertise: Tuesday, November 28 and December 5, 2023

**CITY OF WOOSTER, OHIO**  
**PURCHASE OF POLYPHOSPHATE**

**SECTION C**  
**INSTRUCTIONS FOR BIDDERS**

# INSTRUCTIONS TO BIDDERS

## 1. SUBMISSION OF BIDS

Sealed bids for Purchase of POLYPHOSPHATE will be received by the Contract Specialist in the office of the City Engineer in the Municipal Building, 538 N Market Street, Wooster, Ohio 44691, until noon, on the date specified in the Legal Notice at which time they will be publicly opened and read aloud.

In order to receive consideration, bids shall be submitted in the following manner:

- a) Bid proposals must be received prior to the time of bid opening. No proposals received after said time of bid opening will be considered, and the proposals will be returned unopened to any bidders failing to submit bids prior to the time of bid opening.
- b) Bid proposals shall be submitted in a sealed envelope marked "**BID FOR FURNISHING POLYPHOSPHATE.**" If forwarded by mail, the envelope shall be sent inside another envelope also marked "**BID FOR FURNISHING POLYPHOSPHATE**" and addressed to the Director of Administration.
- c) All bids shall be signed and submitted on the blanks that are found in the bidding documents. All blanks shall be completed in full. A bid of zero dollars or \$0.00 should be filled in with either zero, 0 or \$0.00.
- d) All bid proposals shall be typewritten or filled in with pen and ink, and shall be signed with pen and ink. The proposal must be signed with the firm name and by an officer or employee having the authority to bind the company or firm by his/her signature.
- e) **The City of Wooster requires all interested parties to have completed and submitted the Plan holder Registration form located on the ViewPoint website (<https://woosteroh.viewpointcloud.com/categories/1072/record-types/6496>) in order for submittals to be considered, and contact information must also be included with the bid bonds submitted.**

## 2. BIDDING DOCUMENTS

Complete sets of Bidding Documents must be used in preparing Bids; the City assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Bid Documents thoroughly, (b) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work, (c) study and carefully correlate Bidder's observations with the Bid Documents, and (d) notify the Director of Administration of all conflicts, errors or discrepancies in the Bid Documents.

Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations and investigations, and obtain any additional information and data which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

The submission of Bid will constitute an irreversible representation by Bidder that Bidder has complied with every requirement of the Contract Documents, and without exception the Bid is premised upon performing and furnishing all of the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. All bids shall be valid for sixty (60) days and City shall have up to sixty (60) days to issue a Notice of Award to the successful bidder.

### 3. BID GUARANTY/PERFORMANCE BOND

Each bid shall be accompanied by a Bid Guaranty in the form of a certified check or a bid bond payable to the City of Wooster, in a sum not less than Ten Percent (10%) of the total amount bid, not including extra cost options. Certified checks or Bid bonds will be returned to unsuccessful bidders within thirty days of bid opening. Certified checks or Bid bonds of successful bidders will be returned upon execution of a contract with the City, its performance secured, and tender of a payment and performance bond.

The successful bidder shall furnish a performance and payment bond in an amount equal to the contract amount as security for the faithful performance and payment of all contractors' obligations under the Contract Documents.

IMPORTANT: Surety companies executing BONDS must appear on the U.S. Treasury Department's most current list (Circular 570 as amended) must be authorized to issue surety bonds in Ohio by the Superintendent of the Ohio Department of Insurance and properly licensed by the Ohio Department of Insurance to do business in the State of Ohio.

### 4. PRICES TO INCLUDE

The price bid for all items of work shall include all labor, materials, tools, equipment, etc., necessary to furnish and install in place, complete and in operating condition the items listed, shown and/or specified.

### 5. VARIATION FROM SPECIFICATIONS

Any items that the bidder wishes the City to consider in evaluation of these bids shall be included in the bid package. The City will not consider items submitted separately.

Items included with the bid and representations made therein shall be considered to be binding upon the bidder.

### 6. TAXES



The City of Wooster is exempt from any sales or use taxes imposed by the State of Ohio and/or the United States Government. All bids shall exclude sales or use taxes on the Project. Exemption certificates will be certified upon request by any prospective bidder.

#### 7. DISCLOSURE OF DELINQUENT PERSONAL PROPERTY TAXES

This contract is subject to the requirements of Section 5719.042 of the Ohio Revised Code. The successful bidder, after being notified of the award of the contract and prior to the time the contract is entered into, shall submit a statement to the City Auditor of the City of Wooster, Ohio, affirmed under oath, disclosing whether or not the bidder, at the time the bid was submitted, was charged with any delinquent personal property taxes, and a copy of the statement shall be incorporated into the contract.

#### 8. ACCEPTANCE OF BIDS

The City of Wooster, Ohio reserves the right to reject any and all bids; to waive minor irregularities in the bid and to award the contract or contracts to the lowest and best bidder that the City deems will best serve the City.

The City reserves the right to reject the Bid of any Bidder if City believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by City.

Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Bids, City will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid form or prior to the Notice of Award.

City may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. City also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

City may conduct such investigations as City deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to City's satisfaction within the prescribed time.

If the Contract is to be awarded, it will be awarded to the lowest and best Bidder whose evaluation by City indicates to City that the award will be in the best interests of the Project.

If the Contract is to be awarded, City will give the Successful Bidder a Notice of Award within sixty days after the day of the Bid opening.

## 9. QUALIFICATIONS OF BIDDERS

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days of City's request written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below (or in the Supplementary Instructions). Each Bid must contain evidence of Bidder's qualification to do business in the State of Ohio or covenant to obtain such qualification prior to award of the Contract.

In determining the award of Contract, consideration will be given to:

- a) The lowest and best bid.
- b) The Bidder's record of experience in projects of this type.

No bid will be accepted from, nor Contract awarded to, anyone who is in arrears to the City upon Debt or Contract, or has defaulted on prior work for the City or otherwise upon any obligation to the City, or whose work on prior projects has proven unsatisfactory or dilatory.

## 10. WITHDRAWAL OF BID

Any bid may be withdrawn prior to the scheduled time of the bid opening, but only by submitting a request to withdraw the bid in writing and signed by the individual submitting the bid. No bidder may withdraw a bid for a period of sixty (60) days from the date of bid opening.

## 11. CONFLICT OF INTEREST BY THE CITY

No elected official, staff member, or employee of the City shall become directly or indirectly interested personally in any bid submitted, the contract awarded or in any part thereof.

## 12. REQUIREMENTS OF THE SUCCESSFUL BIDDER

- a) Bidders may be required to attend a pre-award conference to explain any variations from the Specifications or conditions herein.
- b) Demonstration: The successful bidders may be called upon to demonstrate to the City its ability to perform under the contract.
- c) Notice of Award and Agreement: The successful bidder(s) shall be required to acknowledge the Notice of Award and to execute the Agreement on forms included herein, within ten (10) calendar days from the date of the Notice of Award.

## 13. SUBCONTRACTS

Bidders who proposed subcontracts must provide the following information to the City for each subcontractor.

- a) The company name of each subcontractor, its address and scope of work to be performed.
- b) Delinquent Personal Property Tax Affidavit, and Qualifications Statements.
- c) A list of references that may be contacted regarding ability to perform projects of a similar nature.

The City reserves the right to review the information submitted and must approve in writing all subcontractors.

14. “OR EQUAL”

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items.

Application for such acceptance of “or equal” items will not be considered by City until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by City are set forth in the General Conditions.

Whenever a material, article, or piece of equipment is identified on the drawings or specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalogue number, and if, in the opinion of the City, such material, article, or piece of equipment is of equal substance and function to that specified, the City may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time.

15. SIGNING OF AGREEMENT

When City gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within the time stipulated in the "Notice of Award" thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to City with the required Bonds. Within twenty days thereafter City shall deliver one fully signed counterpart to Contractor.

16. PATENTS

The Contractor shall pay all applicable royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and save the City harmless from loss on account thereof, except that the City shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified; however, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, it shall be responsible for such loss unless it promptly gives such information to the City.

**CITY OF WOOSTER, OHIO**  
**PURCHASE OF POLYPHOSPHATE**

**SECTION D**  
**BID DOCUMENTS**

City of Wooster  
Purchase of Polyphosphate  
Bid Form

Number	Description	Quantity (estimated)	Unit	Unit Price	Total
1	POLYPHOSPHATE	20,000	POUND	\$	\$
				<b>BID TOTAL</b>	\$

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

I, \_\_\_\_\_, having fully read the Requirements, Instruction to Vendors and the Specifications and being authorized to do so, submit this proposal on behalf of the above named Company.

Bidder acknowledges receipt of the following addendum(a):

No.	Date
_____	_____
_____	_____

_____	_____	_____
Signature	Title	Date

**COVER SHEET  
BID BOND**

Pursuant to the condition of the foregoing Notice to Bidders attached hereto is a Surety Company bond for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

In case this proposal shall be accepted by the Owner and the undersigned shall fail to execute the contract and furnish a satisfactory bond as stated in the foregoing Notice to Bidders within (10) days (Sunday excepted) after notification of the award of the contract, then the said Owner may at its option determine that the undersigned has abandoned the contract and thereupon this proposal shall be null and void and the Surety bond accompanying same shall be forfeited to and become the property of the Owner as liquidated damages.

The full names and residences of all persons and parties interested in the foregoing bid as principals are as follows:

NAMES	ADDRESSES
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Name(s) of Bidder(s)  
\_\_\_\_\_

Business Address of Bidder \_\_\_\_\_

Dated at \_\_\_\_\_, the \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_\_.

Proposal submitted by:

\_\_\_\_\_  
Signature Title

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_

\_\_\_\_\_  
(Here insert full name or legal title of Contractor and address)

as Principal and \_\_\_\_\_  
(Here insert full name or legal title of Surety)

as Surety, are held and firmly bound unto the City of Wooster \_\_\_\_\_  
(Here insert full name or legal title of Owner)

in the sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to be paid to the said City of Wooster, Ohio, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, our successors, and assigns, executors and administrators jointly and severally, firmly by these presents.

The condition of this obligation is such that, if the proposal for \_\_\_\_\_

is accepted, and the contract awarded to the above named bidder, and the bidder shall within (10) days after such award is made enter into a contract and give bond as required; then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Signed and sealed at \_\_\_\_\_, this

\_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

Principal

\_\_\_\_\_  
\_\_\_\_\_

Surety

**CERTIFICATION/AFFIDAVIT IN COMPLIANCE WITH O.R.C. SECTION 3517.13**

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**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_, ss:

Personally appeared before me the undersigned, a bidder or representative of a bidder in competitive bidding on behalf of \_\_\_\_\_ for a contract  
(Name)  
for furnishing Polyphosphate to be let by City of Wooster who, being  
(Type of Product or Service) (Municipal Owner)  
duly cautioned and sworn, makes the following statement with respect to prohibited activities constituting a conflict of interest or other violations under Section 3517.13 O.R.C., and further states that the undersigned has the authority to make the following representation on behalf of the entity if the undersigned as an individual is not the bidder himself or herself:

1. On behalf of the individual, partnership, other unincorporated business association, professional association organized under Chapter 1785 O.R.C. or estate or trust that all of the following persons, where applicable, are in compliance with 3517.13 (I)(1)1:
  - a. the individual;
  - b. each partner or owner of the partnership or other unincorporated business;
  - c. each shareholder of the association;
  - d. each administrator of the estate;
  - e. each executor of the estate;
  - f. each trustee of the trust;
  - g. each spouse of any person identified in (a) through (f) of this section;
  - h. each child seven years of age to seventeen years of age of any person identified in (a) through (f) of this section;
  - i. any combination of persons identified in (a) through (f) of this section.

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1 O.R.C. § 3517.13 (I) (1) (a) provides: no agency or department of this state or any political subdivision shall award any contract for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to any individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust if *any person or entity* listed herein in paragraph 1, sub-paragraphs a-i above, *has made, as an individual*, within the two previous calendar years, *one or more contributions totaling in excess of one thousand dollars* to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee.



2. On behalf of the individual, partnership, other unincorporated business association, professional association organized under Chapter 1785 O.R.C. or estate or trust that all of the following persons, where applicable, are in compliance with 3517.13 (I)(1) (b)2:

- a. the individual;
- b. each partner or owner of the partnership or other unincorporated business;
- c. each shareholder of the association;
- d. each administrator of the estate;
- e. each executor of the estate;
- f. each trustee of the trust;
- g. each spouse of any person identified in (a) through (f) of this section;
- h. each child seven years of age to seventeen years of age of any person identified in divisions (a) through (f) of this section;
- i. any political action committee affiliated with the partnership or other unincorporated business, association, estate, or trust.

3. On behalf of a corporation or business trust, except a professional association organized under Chapter 1785 O.R.C., that all of the following persons, where applicable, are in compliance with 3517.13 (J)(1)3:

- a. an owner of more than twenty per cent of the corporation or business trust;
- b. each spouse of an owner of more than twenty per cent of the corporation or business trust;
- c. each child seven years of age to seventeen years of age of an owner of more than twenty per cent of the corporation or business trust;
- d. any combination of persons identified in (a) through (c) of this section.

4. On behalf of a corporation or business trust, except a professional association organized under Chapter 1785 O.R.C., that all of the following persons, where applicable, are in compliance with 3517.13 (J)(2)4:

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2 O.R.C. § 3517.13 (I) (1) (b) provides: no agency or department of this state or any political subdivision shall award any contract for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to any individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust if *any combination of the person or entity* listed herein in paragraph 2, subparagraphs a-i above, *has made* within the two previous calendar years, *one or more contributions totaling in excess of two thousand dollars* to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee.

3 O.R.C. § 3517.13 (J) (1) (a) provides: no agency or department of this state or any political subdivision shall award any contract for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to a corporation or business trust, except a professional association organized under Chapter 1785 of the Revised Code, *if any person listed herein in paragraph 3, sub-paragraphs a-d* has made, *as an individual*, within the two previous calendar years, taking into consideration only owners for all of that period, *one or more contributions totaling in excess of one thousand dollars* to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee.

4 O.R.C. § 3517.13 (J) (1) (b) provides: no agency or department of this state or any political subdivision shall

- a. an owner of more than twenty per cent of the corporation or business trust;
- b. each spouse of an owner of more than twenty per cent of the corporation or business trust;
- c. each child seven years of age to seventeen years of age of an owner of more than twenty per cent of the corporation or business trust;
- d. any political action committee affiliated with the corporation or business trust.

**BIDDER:**

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Sworn to before me and subscribed in my presence by the above named person this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

NOTARY PUBLIC: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

*Eff. Apr. 4, 2007[Am. Sub.HB 694]*

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award any contract for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to a corporation or business trust, except a professional association organized under Chapter 1785 of the Revised Code, *if any combination of the following has made*, within the two previous calendar years, taking into consideration only owners for all of that period, *one or more contributions totaling in excess of two thousand dollars* to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee.

**CITY OF WOOSTER, OHIO**  
**PURCHASE OF POLYPHOSPHATE**

**SECTION E**  
**AGREEMENT DOCUMENTS**

**AGREEMENT**

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, for **Purchase of POLYPHOSPHATE**, in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), by and between the City of Wooster, Ohio, hereinafter called the "City", acting herein through its Director of Administration and \_\_\_\_\_, doing business as (a corporation) (a partnership) (an individual) in the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, hereinafter called the "Contractor."

**WITNESSETH:** That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will furnish materials and services in accordance with the terms of the Contract Documents.

2. The following variations from the Contract Documents and or options have been agreed to:

\_\_\_\_\_

\_\_\_\_\_

3. The term "Contract Documents" means and includes the following:

- a) Advertisement for Bids
- b) Instruction to Bidders
- c) General Conditions
- d) Supplementary Conditions, if any
- e) Plans
- f) Specifications
- g) Payment and Performance Bond
- h) Notice of Award
- i) Delinquent Personal Property Tax Affidavit
- j) Agreement
- k) Purchase Order with Legal & Fiscal Officers' Certificates
- l) Addenda:

No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_.

No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_.

- m) Any amendments to the above documents entered into by the City before or after award of Contract.

4. City's engagement of the Contractor is based upon the Contractor's representations to the City that the Contractor:

- a) has reviewed all documents pertinent to its portion or scope of the and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient;
- b) is an organization experienced in and qualified, willing and able to provide equipment of the nature and type necessary to perform its portion or scope of the Work
- c) is authorized and licensed to do business in Ohio;
- d) has the expertise and ability to meet the City's objectives and requirements.

5. The Contractor shall furnish services and labor which expeditiously, economically and properly complete its particular scope of the Work in the manner most consistent with the City's interests and objectives; in accordance with the Contract Documents, and in accordance with the highest standards currently practiced by persons and entities performing comparable labor and services on projects of similar size and complexity.

6. The Contractor expressly warrants and guarantees to the City that all goods, products, materials, equipment, and systems incorporated in its particular scope of the Work shall conform to applicable; be new and without apparent damage; be of quality equal to or higher than that required by the Bid Documents; be merchantable; and free from defects

7. The Contractor expressly warrants and guarantees to the City that all labor and services required for its particular scope of Work shall comply with the Bid Documents; be performed in a workmanlike manner; and be free from defects.

8. All warranties and guarantees set forth above shall be in addition to all other warranties, express, implied or statutory, and shall survive payment for, acceptance or inspection of, or failure to inspect the Work.

9. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

10. With respect to the intent and interpretation of this Contract, the City and the Contractor agree as follows:

- (a) This Contract documents constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.
- (b) Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price;
- (c) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the City and any person except the Contractor;
- (d) When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

- (e) The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation";
- (f) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;

11. The Contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

- (a) Construction of the Project;
- (b) The furnishing of any required surety bonds and insurance;
- (c) The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project;
- (d) Neither payment to the Contractor, utilization of the Project for any purpose by the City, nor any other act or omission by the City shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract;
- (e) Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor shall furnish the City, in the form and manner required by City:
  - (1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
  - (2) If required by the City, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the City or the City's property;
  - (3) If applicable, consent(s) of surety to final payment;
  - (4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout;

12. Termination by the Contractor

If the City repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the contractor may terminate performance under this Contract by written notice to the City and the Engineer. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience. At no time shall the City be liable for extra contractual, special, consequential, punitive or any other damages resulting from any cause including but not limited to loss of business, loss of business opportunity or any other damages not directly incurred by Contractor on the Project.

13. City's Right to Suspend Contractor's Performance

The City shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to

30 calendar days. If any such suspension is directed by the City, the Contractor shall immediately comply with same.

In the event the City directs a suspension of performance under this Paragraph, through no fault of the Contractor, the City shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- (a) demobilization and remobilization, including such costs paid to subcontractors;
- (b) preserving and protecting work in place;
- (c) storage of materials or equipment purchased for the Project, including insurance thereon;
- (d) performing in a later, or during a longer, time frame than that contemplated by this Contract.

#### 14. Termination by the City

The City may terminate this Contract in accordance with the following terms and conditions:

- a) The City for any reason whatsoever, may terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. Unless otherwise advised by the City, the Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the City or its designee. The Contractor shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:
  - 1) The Contractor shall submit a termination claim to the City and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City or the Engineer. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Contractor, an amount derived in accordance with Subparagraph (3) below;
  - (2) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;
  - (3) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:
    - (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
    - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or nonsequential damages); provided however, that if it appears that the Contractor would have

not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

- (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (A) of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

- (b) If the Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the City, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Contract.

In the event the employment of the Contractor is terminated by the City for cause pursuant to this Subparagraph and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph A) and the provisions of Subparagraph (A) shall apply.

## 15. Dispute Resolution.

Any and all disputes concerning this Agreement, the performance of work, and/or any other contract documents including but not limited to requests for additional compensation or extension of the contract completion date shall be resolved as follows and as set forth in Section 10 of the General Conditions:

- (a) Notice of a claim or request shall be submitted to the City Director of Administration and City Engineer within seven (7) calendar days after the initial acts giving rise to the claim. At such time, the Contractor shall provide all information including costs or anticipated costs or time extensions. If the costs or time extension is not currently known, Contractor shall note same and shall provide updates every thirty (30) days until the claim is fully ready for analysis and consideration by the City. In connection with the claim submission, Contractor shall also provide supporting documents and proof for its claim or request for extension of time.
- (b) The City shall have up to forty-five (45) days to consider and determine any and all such claims or requests for extension of time, after it has been fully submitted. Contractor



shall take no further action in connection with the claim or request until either the City has issued a decision or forty-five (45) days has passed. During the pendency of such claim, Contractor shall continue to fully perform on the Project unless otherwise advised by City.

- (c) The City shall issue a written decision within forty-five (45) days of receipt of the complete claim or request from the Contractor.
- (d) If Contractor is not satisfied with the City's determination, it may submit such dispute to the Court of Common Pleas in Wayne County, Ohio for a final determination. Contractor shall not proceed to litigation in Wayne County Common Pleas Court until and unless it has exhausted all administrative remedies as set forth herein.

16. Applicable Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

17. Amendments.

Any amendments to this Agreement and/or any other contract document must be writing entered into by the Contractor and City in accordance with the City's provisions for entering into contracts. No amendment to this Agreement and any other contract documents shall be valid unless it is in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies, each of which shall be deemed an original on the date first written above.

City of Wooster, Ohio

ATTEST:

\_\_\_\_\_ By: \_\_\_\_\_  
Joel Montgomery, P.E.  
Director of Administration

ATTEST:

\_\_\_\_\_ Contractor: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_ Phone: \_\_\_\_\_

---

**LEGAL OFFICER’S CERTIFICATE**

Project Identification: POLYPHOSPHATE Contract

The foregoing Agreement between the City of Wooster, Ohio (City) and

\_\_\_\_\_ (Contractor) is approved as to form.

\_\_\_\_\_ Date

\_\_\_\_\_ John A. Scavelli, Director of Law

**DELINQUENT PERSONAL PROPERTY TAX AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

**BID IDENTIFICATION**

The undersigned, being first duly sworn, having been awarded a contract by the City of Wooster, Wayne County, Ohio for

\_\_\_\_\_  
\_\_\_\_\_

hereby affirms, pursuant to Section 5719.042 of the Ohio Revised Code that, at the time the Bid was submitted the company **(was) (was not)** charged with delinquent personal property taxes of the General Tax List of Personal Property for Wayne County, Ohio.

If such charge for delinquent personal property taxes exists on the General Tax List of Personal Property for Wayne County, Ohio, the amount of such due and unpaid delinquent taxes, including due and unpaid penalties shall be set forth below.

A copy of this statement shall be transmitted by the Fiscal Officer to the County Treasurer within thirty (30) days of the date it is submitted.

Delinquent Personal Property Tax: \$ \_\_\_\_\_

Penalties: \$ \_\_\_\_\_

Interest: \$ \_\_\_\_\_

Signed:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NOTARY SEAL

\_\_\_\_\_  
*Notary Public*

**CONTRACT BOND**

KNOW ALL MEN BY THESE PRESENT, that we, the undersigned, \_\_\_\_\_

\_\_\_\_\_

as principal and \_\_\_\_\_

as sureties, are hereby held and firmly bound unto the City of Wooster, Ohio, in the penal sum of \_\_\_\_\_ Dollars

for payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, THAT, whereas the above

named principal did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, enter into a contract with the City of Wooster, Ohio, which said contract is made a part of the bond and the same as though set forth herein;

Now, if the said principal shall well and faithfully do the things agreed by him (it) to be done and performed according to the term of said contract, and shall pay all lawful claims of sub-contractors, material-men and laborers, for labor performed and material furnished in the carrying forward, performing or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any material man or laborer having a just claim as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated. The said surety hereby stipulates and agrees that no modifications, omissions or additions, in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise effect the obligations of said surety on its bond.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Principal

**CITY OF WOOSTER, OHIO**  
**PURCHASE OF POLYPHOSPHATE**

**SECTION F**  
**MISCELLANEOUS CONTRACT FORMS**

**NOTICE OF AWARD**

To:

The City of Wooster, Ohio, having considered the Bid submitted by you for Purchase of POLYPHOSPHATE in response to the Advertisement for Bids dated \_\_\_\_\_, 20\_\_ and in the amount of \$ \_\_\_\_\_ does hereby notify you that your bid has been accepted.

The following variations from the Specifications and Bid Instructions have been allowed:

\_\_\_\_\_  
\_\_\_\_\_

Delivery shall be on or before the period established in the bidding documents.

You are required to execute the Agreement within ten (10) calendar days from the date of this Notice to you. If you fail to execute said Agreement within ten (10) calendar days of the date of this Notice, the City of Wooster will be entitled to consider all of its rights arising out of the City's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The City of Wooster will also be entitled to such other rights as may be granted by law.

City of Wooster, Ohio

By: \_\_\_\_\_ Date: \_\_\_\_\_

Joel Montgomery, P.E.

Title: Director of Administration

**Acceptance of Notice of Award**

Receipt of the above Notice of Award is hereby acknowledged by

\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTICE TO PROCEED**

To: \_\_\_\_\_

Date: \_\_\_\_\_

Project: \_\_\_\_\_

\_\_\_\_\_

You are hereby to commence WORK in accordance with the Agreement dated \_\_\_\_\_, 20\_\_ for the contract period running January 1, 2024 through December 31, 2024. The final date of the contract is therefore December 31, 2024.

Owner: City of Wooster

\_\_\_\_\_  
Joel Montgomery, P.E.  
Director of Administration

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

by \_\_\_\_\_,

on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Name & Title: \_\_\_\_\_

**CITY OF WOOSTER, OHIO**  
**PURCHASE OF POLYPHOSPHATE**

**SECTION G**  
**GENERAL CONDITIONS**



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For  
General Conditions

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## GENERAL CONDITIONS

### 1. GUARANTEE AND WARRANTY

The Contractor shall guarantee and warrant all equipment for two (2) years from the date of the completion of the installation. All faulty installations shall be repaired within the warranty period by the contractor at no expense to the City.

### 2. PAYMENTS

The contractor shall prepare and present to the City a Payment Request. Payment Requests may be submitted at any time but not more often than once per month.

Said Payment Request shall be in such format and shall include supporting information as may be required by the City. Payment Requests may include a request for payment of labor and materials properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site less the total amount of previous payments received from the City. Any payment on account of stored materials will be subject to the Contractor providing written proof that the City has title to such materials. Each such Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract, all other contract documents and that the Contractor knows of no reason why payment should not be made as requested. After that, the Director shall review the Payment Request and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the work as represented in the Payment Request and is as required by this Contract.

The amount of each such payment shall be the amount approved for payment by the Director less retainage of 8% for the first 50% of work completed and less such amounts, if any, otherwise owing by the Contractor to the City or which the City shall have the right to withhold as authorized by this Contract. The Administrator's approval of the Contractor's Payment Requests shall not preclude the City from the exercise of any of its rights. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which the City has previously paid is free and clear of any lien, claim or other encumbrance of any person whatsoever. As a condition precedent to payment, the Contractor shall, if required by the City, also furnish to the City properly executed waivers of lien or attested accounts, in a form acceptable to the City, from all subcontractors, materialmen, suppliers or others having lien or attested account rights, wherein said subcontractors, materialmen, suppliers or others having lien or attested account rights, shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights, attested accounts, attested account rights, or other claims relating to the Project. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work included in such payment shall be vested in the City.

The unit price, as bid, shall be full compensation for all work performed according to these specifications.

The City shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

- (a) The quality of a portion, or all, of the Contractor's work not being by the requirements of this Contract and all other contract documents;
- (b) The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
- (c) The Contractor's rate of progress being such that, in the City's opinion, substantial or final completion, or both, may be inexcusably delayed;
- (d) The Contractor's failure to use Contract funds, previously paid the Contractor by the City, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
- (e) Claims made, or likely to be made, against the City or its property;
- (f) Losses caused by the Contractor's failure or refusal to perform any of its obligations to the City;

If the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 2, the Contractor shall promptly comply with such demand.

In the event the City becomes informed that the Contractor has not paid a subcontractor, materialman, laborer, or supplier as

provided herein, the City shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the City, shall create no rights for any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

Neither payment to the Contractor, utilization of the Project for any purpose by the City, nor any other act or omission by the City shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract, and all contract documents.

### 3. BONDS AND INSURANCE

#### 3.1 Performance and Other Bonds:

Contractor shall furnish performance and payment bonds in an amount equal to One Hundred Percent (100%) of the contract award amount as security for the faithful performance and payment of all Contractor's obligations under Contract Documents. These Bonds shall remain in effect at least until two years after the date when final payment is made, except as otherwise provided by Law or Regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such Sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department and as authorized to issue surety bonds in the State of Ohio by the Superintendent of the Ohio Department of Insurance. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

If the surety of any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its rights to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 3.1 Contractor shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to City.

#### 3.2 Bid Bonds

Bid security shall be in an amount not less than ten percent (10%) of the total amount bid. All bonds shall meet the requirements of O.R.C. Section 153.571, and as specified in these Contract Documents. Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and as authorized to issue surety bonds in the State of Ohio by the Superintendent of the Ohio Department of Insurance.

The Bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen days after the Notice of Award, City may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom City believes to have a reasonable chance of receiving the award may be retained by City until the earlier of the seventh day after the Effective Date of the Agreement or the sixty-first day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven days after the Bid opening. Others will be returned after successful award to a bidder.

### 4. INSURANCE

#### 4.1 Contractor's Liability Insurance:

Contractor shall purchase and maintain such Commercial General Liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance and furnishing of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

Claims under worker's disability benefits and other similar employee benefit acts, damages because of bodily injury, occupational sickness, disease, or death of Contractor's employees;

Claims for damages because of bodily injury, property damage, personal injury, sickness or disease, or death of any person other than Contractor's employees which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason;

Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting from that place; and

Claims arising out of operation of Laws and Regulations for damages because of bodily injury or death of any person or for damage to property.

The insurance required by this Section shall include the specific coverages and be written with limits of liability not less than One Million Dollars (\$1,000,000 each occurrence). The Commercial General Liability insurance shall include completed operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to City by certified mail and shall contain an endorsement naming the City of Wooster as Additional Insured with respect to Contractor's work performed pursuant to this agreement. All such insurance shall remain in effect during the term of the contract.

The risk of loss within the deductible amount will be borne by Contractor, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

#### 4.2 Contractual Liability Insurance:

The Commercial General Liability insurance required will include contractual liability insurance applicable to Contractor's obligations.

#### 4.3 City's Liability Insurance:

City shall be responsible for purchasing and maintaining City's own liability insurance and, at City's option, may purchase and maintain such insurance as will protect City against claims which may arise from operations under the Contract Documents.

City shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Contractor, Subcontractors or others in the Work.

#### 4.4 Builder's Risk Insurance:

City may obtain and maintain builder's risk property insurance during the project in a form acceptable to it for the full costs of replacement at the time of any loss as set forth herein. This insurance shall include as additional insureds, the Contractor, Subcontractors and material suppliers working on the Project. This insurance shall include all risk insurance for physical loss for damage including without duplication of coverage at least theft, vandalism, malicious mischief, flood, earthquake, tornado, Acts of God and other related matters. Owner may increase the limits of coverage if necessary to reflect estimated replacement costs. This insurance shall be written without a co-insurance clause. Owner shall be solely responsible for any deductible amounts.

#### 4.5 Waiver of Rights:

City and Contractor waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to requirements herein and any other property insurance applicable to the Work, and also waive all such rights against the Subcontractors, and all other parties named as insureds in such policies for losses and damages so caused. Each subcontract between Contractor and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of City, Contractor, and all other parties named as insureds. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by City as trustee or otherwise

payable under any policy so issued.

City and Contractor intend that any policies provided in response to requirements herein shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if the insurers require separate waiver forms to be signed by any Subcontractor, Contractor will obtain the same.

#### 4.6 Receipts and Application of Proceeds:

Any insured loss under the policies of insurance required herein will be adjusted with City and made payable to City as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. City shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

City as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to City's exercise of this power. If such objection be made, City as trustee shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, City as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of such duties.

#### 4.7 Acceptance of Insurance:

If City has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Contractor on the basis of its not complying with the Contract Documents, City shall notify Contractor in writing thereof within ten days of the date of delivery of such certificates to City. If Contractor has any objection to the coverage afforded by or other provisions of the policies of insurance required to be purchased and maintained by City on the basis of their not complying with the Contract Documents, Contractor shall notify City in writing thereof within ten days of the date of delivery of such certificates to Contractor. City and Contractor shall each provide to the other such additional information in respect of insurance provided by each as the other may reasonably request. Failure by City or Contractor to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the other as complying with the Contract Documents.

### 5. ESTIMATED QUANTITIES

The Contractor agrees that the estimated quantities are only for the purpose of comparing the bids offered for the work under this Contract, and further agrees that he will make no claim for anticipated profits or loss of profits because of a difference between the quantities of the various classes of work actually furnished and the said estimated quantities; and he agrees that the City shall not be held responsible if, in the construction of the work, any of the said estimated quantities should be found to vary from the quantities shown, and that the City may, without alteration or modification of this Contract, increase, decrease, or omit the amount of any class or portion of the work as may be deemed necessary.

### 6. FINAL COMPLETION

When the Project is finally complete it shall notify the City in writing. Thereupon, the Director will perform a final inspection of the Project. If the Director confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the City hereunder, the Director will furnish a final Approval for Payment to the City certifying to the City that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Prior to completion, Contractor shall deliver to City two sets of as-built documents making all necessary modifications to the plans and specifications to reflect as-built conditions of the Project

### 7. CEASE AND DESIST ORDER

In the event the Contractor fails or refuses to perform the work as required herein, the City may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the work may resume. In the event the City issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right, but not the obligation, to carry out the work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work by the City. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the City may have against the Contractor.

## 8. DUTIES, OBLIGATIONS, AND RESPONSIBILITIES OF THE CONTRACTOR

If the Contractor performs work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the City, the Contractor shall be responsible for such work and pay the cost of correcting same;

All work shall strictly conform to the requirements of this Contract; The work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the work on behalf of the Contractor;

The Contractor warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials shall be new and of high quality, that the completed work will be complete, of high quality, without defects, and that all work strictly complies with the requirements of this Contract and the contract documents. Any work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty;

The Contractor shall obtain and pay for all required permits, fees and licenses. The Contractor shall comply with all legal requirements applicable to the work;

The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The Contractor shall give written notice to the City of key supervisory personnel assigned by the Contractor to this Project, and shall not change them without notice to the City and approval by the City.

The Contractor shall maintain the Project site in a reasonably clean condition during the performance of the work.

The Contractor will supervise and direct the work and shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

The Contractor agrees that none of its employees, agents, contractors or subcontractors will hold themselves out as, or claim to be, agents, officers or employees of The City of Wooster, and will not, by reason of any relationship with The City of Wooster, make any claim, demand or application to or for any right or privilege applicable to an agent, officer or employee of the City, including but not limited to, rights and privileges concerning worker's compensation and occupational diseases coverage, unemployment compensation benefits, social security coverage or retirement membership or credit.

## 9. CLAIMS BY THE CONTRACTOR

Claims by the Contractor against the City are subject to the following terms and conditions and as outlined in Section 15, Dispute Resolution, of the Agreement:

- (a) All Contractor claims against the City shall be initiated by a written claim submitted to the City. Such claim shall be received by the City no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall outlined in detail all known facts and circumstances supporting the claim;
- (b) The Contractor and the City shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor;

- (c) In connection with any claim by the Contractor against the City for compensation more than the Contract Price, any liability of the City for the Contractor's cost shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor;
- (d) In the event the Contractor should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the City or someone acting on the City's behalf, or by City-authorized Change Orders, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, final completion, shall be appropriately adjusted by the City upon the written claim of the Contractor to the City and the Engineer. A task is critical within the meaning of this Subparagraph if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements herein. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

#### 10. TAXES

The Contractor will pay all sales, consumer, use and other similar taxes required by law unless otherwise exempt from doing so.

#### 11. CHANGE ORDERS AND CHANGES TO WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the Contract. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by Change Order.

The City Project Manager, also, may at any time, by issuing a Field Order, make changes in the details of the work. The Contractor shall proceed with the performance of any changes in the work so ordered by the City unless the Contractor believes that such Field Order entitles him to a change in Contract Price or time, or both, in which event he shall give the City Project Manager written notice thereof within seven (7) days after the receipt of the ordered change. After that the Contractor shall document the basis for the change in Contract Price or time within thirty (30) days. The Contractor shall not execute such changes pending the receipt of an executed Change Order or further instruction from the Owner.

The value of any work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

- (a) Unit prices previously approved
- (b) An agreed lump sum price including but not to exceed fifteen percent (15%) for general Overhead and profit.
- (c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the WORK to cover the cost of general overhead and profit.

#### 12. CORRECTION OF WORK

The Contractor shall promptly remove from the premises all work rejected by the City for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the work in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

All removal and replacement WORK shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work within ten (10) days after receipt of written Notice, the Owner may remove such work and store materials and all such removal and storage costs shall be at the expense of the Contractor.

#### 13. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or

arising out of this work. Any payment, however, final or otherwise, shall not release the Contractor or his sureties from any obligations under the Contract Documents or the Performance Bond and Payment Bonds.

#### 14. AFFIRMATIVE ACTION

The Contractor commits itself to the goals for minority manpower utilization, as applicable, and all other requirements, terms, and conditions of these bid conditions by submitting a properly signed bid.

The Contractor shall appoint a company executive to assume the responsibility for the implementation of the requirements, terms, and conditions of these bid conditions.

#### 15. ASSIGNMENT

A. The Contractor shall not sell, transfer, assign or otherwise dispose of the Contract, contract documents or any portion thereof, or of its right, title, or interest therein, or its obligations thereunder without prior written approval of the Owner.

B. The Contractor shall not sublet, sell, transfer or assign any portion of the contractor without written consent of the Owner or his/her designated agent. When such consent is given, the Contractor will be permitted to sublet a portion thereof, but shall perform with his/her own organization, work amounting to no less than fifty percent of the total contract cost, except that any item designated in the contract before computing the amount of work required to be performed by the Contractor with his/her own organization. No subcontract, or transfer of contract, shall in any way release the Contractor of his/her liability under the contract and bonds.

#### 16. OWNER

The terms City, City of Wooster and Owner are interchangeable throughout the contract documents, and each term shall mean each of the others.

#### 17. OWNERSHIP OF DOCUMENTS

- a. Upon the making of final payment, the Owner shall receive and obtain ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information prepared, provided or procured by the Contractor used on this Project and Contractor grants to Owner the right to use all such documents, drawings, specifications, electronic data and information in furtherance of any needs or services related to the Project.
- b. If this Agreement is terminated for convenience, the Owner shall receive ownership of the property rights, except for copyrights, of the Contractor's documents upon payment for all work performed in accordance with this Agreement, at which time the Owner shall have the right to use, reproduce and make derivative works from the Contractor's documents to complete the work. Contractor represents that it will not copyright its own design drawings or specifications or alternatively, if it does copyright its design drawings and specifications, it grants to Owner the absolute right to use the design drawings and specifications to complete the Project following a termination of Contractor's services.
- c. If Contractor breaches any of its contractual obligations herein, Owner shall be entitled to take possession and ownership of the property rights, except for copyrights, of the Contractor's documents and shall have the right to use, reproduce and make derivative works from the Contractor's documents to complete the work. Contractor represents that it will not copyright its drawings and/or specifications or alternatively, if it does copyright such drawings and specifications, it grants to Owner the right to use the drawings and specifications to complete the Project, under these circumstances.
- d. The Owner may use, reproduce and make derivative works from the Contractor's documents or as-built documents for subsequent renovation and remodeling of the work but shall not use, reproduce or make derivative works from the Contractor's documents or as-built documents for other projects without the written authorization of the Contractor.



- e. The Contractor shall obtain from its subcontractors and consultants all necessary property rights and rights of use that correspond to the rights given by the Contractor to the Owner in connection with the Contractor's documents as outlined in this Agreement.
- f. The Owner's use of the Contractor's documents without the Contractor's involvement or on other projects is at the Owner's sole risk.

18. EACH PARTY'S REPRESENTATIVE.

Each party shall designate a person who shall be their authorized representative. Such representatives shall have authority to speak for and bind the Contractor and/or Owner although it is acknowledged that there will be circumstances in which such representative will need to consult with his or her home office before making binding decisions.

19. HAZARDOUS MATERIALS

- a. A hazardous material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or cleanup. Contractor shall not be obligated to commence or continue work until any hazardous material discovered at the work site has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.
- b. If after the commencement of the Project, hazardous material is discovered at the work site, the Contractor shall be entitled to immediately stop work in the affected area. Contractor shall report the condition to the Owner, the Architect and if required, the government agency with jurisdiction.
- c. Contractor shall not be required to perform any work relating to or in the area of hazardous materials without written mutual agreement between Contractor and Owner.
- d. The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner and shall be performed in a manner minimizing any adverse effects upon the work. Contractor shall resume work in the area affected by any hazardous material only upon written agreement between the parties after the hazardous material has been removed or rendered harmless and only after approval, if necessary, of the appropriate governmental agency with jurisdiction.
- e. Material safety data sheets as required by law and about materials or substances used or consumed in the performance of the Project, whether obtained by the Contractor, subcontractors, sub-subcontractors, Owner or others, shall be maintained at the Project by the Contractor and made available to the Owner and subcontractors upon request.
- f. During Contractor's performance of the Project, Contractor shall be responsible for the proper handling of all materials brought to the work site by the Contractor.
- g. The terms of this Section shall survive the completion of the Project under this Agreement and/or any termination of this Agreement.

20. MECHANICS' LIENS AND/OR ATTESTED ACCOUNTS

If an Affidavit for Mechanics' Lien, Mechanics' Lien Affidavit for Attested Account or Attest Account is filed on the Project or against the Property of the Owner, by any subcontractor, sub-subcontractor, material supplier or other entity, Contractor will cause the lien to be released within 30 days after notice from Owner to do so. Contractor will bond off the lien if necessary to accomplish its release. Contractor will hold Owner harmless, defend and indemnify Owner for any and all costs, including attorney's fees, incurred by Owner as a result of an Affidavit for Mechanics' Lien, Affidavit of Attested Account, Mechanics' Lien or Attested Account filed on the Project or property of the Owner.

21. SEVERABILITY

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision of this Agreement. Any provision deemed invalid shall be modified so as to achieve the intent of the Parties.

22. NO WAIVER OF PERFORMANCE

The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

23. TITLES AND GROUPINGS

The titles given to the Sections of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the Sections in this Agreement and the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, use of paragraphs or use of headings be construed to limit any provisions.

24. TIME IS OF THE ESSENCE

All time limits stated in the Contract Documents are of the essence of the Agreement. By executing this Agreement, Contractor confirms that the time limits outlined in this Agreement are reasonable.

25. ELECTRONIC AND FAX DOCUMENTS

All electronic and fax copy documents used on the Project or for any means related to the obligations of either Party to this Agreement shall have the full force and effect as an original document.

**CITY OF WOOSTER, OHIO**  
**PURCHASE OF POLYPHOSPHATE**

**SECTION H**  
**SPECIFICATIONS**

## *SPECIFICATIONS FOR POLYPHOSPHATE*

Approximately 20,000 pounds of blended Polyphosphate (50% polyphosphate/50% orthophosphate) Carus 8,700 or equal per contract year, shall be delivered in bulk to the City of Wooster Water Production Facility, located at 1020 Old Columbus Road, Wooster, Ohio. Delivery shall be made as ordered in 275 gallon totes. Bid price shall be F.O.B. City of Wooster Water Production Facility.

Delivery shall be made before 12:00 Noon, with a maximum load of one tote delivered by pumping tote to bulk tank and returning the tote to supplier.

The quantity of Polyphosphate is an approximate only and does not imply a promise to purchase the full amount. Award shall be based on the unit price quoted.

The City intends to award a one-year contract beginning January 1, 2024 and ending December 31, 2024. However, if the City and the vendor mutually agree the contract may be renewed for one additional year, provided it gives notice to the winning bidder no later than sixty (60) days prior to the expiration of the one-year term.