

## AGREEMENT FOR SERVICE

THIS AGREEMENT is effective on the 1<sup>st</sup> day of May, 2019, by and between the FAIRFAX COUNTY WATER AUTHORITY, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and SOUTHERN IONICS, INC. hereinafter referred to as the "Contractor" (collectively referred to as the "parties").

### WITNESSETH:

In consideration of the mutual covenants set forth herein, the parties agree as follows:

The Contractor shall provide Sodium Bisulfite, as needed, in accordance with the following, in order of precedence: this Agreement for Service ("Agreement" or "Contract"); the Contractor's bid dated April 10, 2019 (Exhibit I); and FW's Invitation for Bids dated March 20, 2019 (including all addenda) (incorporated by reference) (Exhibit II). In the event that Exhibits I and II contradict or limit this Agreement for Service, this Agreement shall prevail.

No representations, arrangements, understandings or agreements relating to the subject matter exist amongst the parties except as expressed in this Agreement.

## 1. CONTRACT SPECIFICATIONS AND RELATED REQUIREMENTS

### 1.1 Chemical Specifications: Sodium Bisulfite

#### A. GENERAL SPECIFICATION

Liquid Sodium Bisulfite is used as a dechlorinating agent or oxygen scavenger. Where it is used as a direct additive in the treatment of potable water, the chemical shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with NSF/ANSI 60, Drinking Water Treatment Chemicals- Health Effects.

#### B. QUALITY/ CONTENT

The Product furnished shall have product content of 38% liquid sodium bisulfite free of adulterants or impurities which might cause hazards or stoppage in the operation of standard water and wastewater treatment equipment.

#### C. PACKAGING AND SHIPPING

Bulk- The contractor shall deliver liquid in tank trucks and offload into storage tanks located at each site.

**D. ESTIMATED QUANTITY AND DELIVERY DESTINATIONS**

<u>Location</u>	<u>Estimated Total usage</u>	<u>Delivery amount/order</u>
Fairfax County DPW	140,000 gallons, bulk	4,000 gallon truckload
FW Site B	35,000 gallons	4,000 gallon truckload

**1.2 Spot Testing of Chemicals at Time of Delivery**

FW reserves the right to have chemical shipments tested by an independent laboratory. Failure of a shipment to comply with the contract specification will be sufficient reason for rejection of the shipment. Should a shipment be rejected, it will be returned to the Contractor, who shall pay all handling and shipping charges in both directions. Upon notice of rejection of a shipment, the Contractor shall furnish another shipment immediately, which shall comply in all respects with the prescribed analysis. In the event the Contractor is unable to promptly furnish the chemical of acceptable quality, the jurisdiction will obtain the chemical elsewhere. Any additional cost incurred by the jurisdiction will be charged to the Contractor either as a credit against an outstanding invoice or as an invoice for immediate reimbursement.

**1.3 Shipping**

Contractor shall ship chemicals in accordance with standard commercial practices and all Federal, State and local laws and regulations. Contractor shall be solely responsible for the shipment until delivery at the designated facility.

**1.4 Weight at Time of Delivery**

FW reserves the right to weigh the shipments on its scales before and after delivery. In order to reduce the time and money required to resolve and adjust for minor weight differences, the net weight shown on the Contractor's weight ticket will be accepted unless it exceeds the net weight shown on FW's ticket by more than 200 lbs. If the net weight shown on the Contractor's ticket exceeds the net weight on FW's ticket by more than 200lbs., the net weight shown on FW's ticket will be used.

### **1.5 Virginia Department of Health Requirements**

The Virginia Department of Health (VDH) requires that all containers are labeled in accordance with all applicable federal regulations. The Contractor is responsible for ensuring that state and federal regulatory compliance is maintained for any chemical and related container furnished under the contract. Failure to maintain compliance as specified in this paragraph will result in termination of the contract.

### **1.6 Estimated Quantities**

The quantities specified herein are estimates based upon current consumption and projected demand for the next contract year, and shall not be construed to represent an amount which FW shall be obligated to purchase. The exact amounts ordered may be more or less subject to the actual needs of FW. Contractor agrees that FW will only be responsible for the amounts actually ordered.

### **1.7 Priority Customer**

Contractor understands and acknowledges that FW provides services that are essential to the health and welfare of the public. Failure of a Contractor to provide chemicals under any Contract issued pursuant to the terms, conditions, and specifications contained in this IFB may jeopardize FW's ability to provide timely services, which may affect the health and welfare of the public served by FW. In the event of product shortages at any level of the production to delivery chain, Contractor agrees and affirms that FW will be given the earliest possible notice and the highest priority for allocation of the item(s) listed herein. To the extent that the Contractor must prioritize and/or allocate delivery among its customers, the requirements of FW will be honored before chemicals are provided to a customer with no obligations with regard to the public health and welfare.

### **1.8 Warranty**

- A. Contractor warrants that the chemical provided under this contract:
1. Conforms to the most current NSF 60/61 and/or ANSI/AWWA standards for water and/or wastewater chemicals,
  2. Conforms in all respects to the chemical specifications contained herein,
  3. Is suitable for a public drinking water supply,
  4. Is free from adulterants or impurities of any kind, and
  5. In addition to any other warranties expressed or implied, the specific warranties of Merchantability and Fitness for a Particular Purpose apply to all orders placed as a result of this solicitation.
- B. If at any time, the chemical supplied by the vendor fails to conform to the specifications, then the Contractor shall, at no additional cost to FW, promptly replace any such chemical. If the Contractor is unable to remedy such

nonconformity during a time period consistent with the requirements, FW may undertake to remedy the nonconformity and in such a case the Contractor shall reimburse FW for any costs thereby incurred.

## **1.9 Delivery**

Each FW location will establish its own delivery schedule based upon its own requirements and the Contractor's specified time to deliver after receipt of an order. Failure to honor delivery schedules (including partial deliveries) may result in damages to FW. FW may at its own option and convenience cure late, partial, or missing deliveries in any manner that best resolves the shortage. The Contractor is liable for any and all costs incurred by FW due to such failures by claiming Liquidated Damages as specified in Section 4 and also recovering any additional losses by deducting the outstanding amount from unpaid invoices, making a claim against a Performance Bond (if one is on file), submitting an invoice to the Contractor, or any other method that best suits FW.

## **1.10 Delivery Requirements**

- A. **Homeland Security Advisory System:** If the Homeland Security Advisor System places the water and waste water industry in Codes High or Severe, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor's yard, the Plant is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor's risk and expense.
- B. Contractor guarantees delivery of chemicals within the delivery schedule. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of a rejected chemical, shall constitute a breach of contract. In the event of such breach, FW has the option to declare the Contractor in default and claim damages as provided in the Liquidated Damages section contained in Section three.
- C. Contractor shall comply with all regulations for tank/truck unloading as established by the US DOT, as well as any State and local requirements for tank/truck unloading.
- D. Chemical containers supplied by the Contractor shall be the sole responsibility of the Contractor at all times and in any circumstance. FW will not pay demurrage or other charges unless FW specifically requests that the Contractor leave the container beyond the delivery date.

- E. The control number shall be provided to the Treatment Plant at the same time as the other required delivery information. A broken seal prior to acceptance of the batch by FW may be cause for refusal of the delivery.
- F. All deliveries shall be accompanied by a receiving ticket under this contract that shall be supported by:
- Contractor's Name,
  - Purchase Order and Call Order Number (release number),
  - Date of Delivery and Date of Order,
  - Materials furnished,
  - Quantity, unit price and extension of each item, and total, in accordance with the contract, and
  - Name of authorized representative ordering the supplies.
- G. The Contractor's delivery ticket will be signed in duplicate by FW's designated representative. One copy will be given to the employee signing for the delivery and the second copy will be retained by the Contractor.
- H. If required by FW, the Contractor will call the plant prior to delivery and shall fax a copy of the driver's license, and a Chemical Shipping Itinerary sheet, which must include the manifest number and the above referenced information.
- I. Deliveries shall be made by within the delivery time specified in the bid submission document. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to FW. If delivery is not made on time, FW shall have the right to procure the material on the open market. Any additional costs incurred by FW as a result of the Contractors failure to provide timely delivery will be at the sole risk and expense of the Contractor.
- J. FW reserves the unilateral right to reject any late or partial delivery. Any related costs shall be borne by the Contractor.
- K. FW has the right to refuse delivery if chemical packaging is damaged, appears to have been tampered with, or is deemed to be a safety hazard or potential safety hazard.
- L. Contractor(s) shall comply with all regulations for tank / truck routing and unloading as established by the US DOT, as well as any State and local requirements for tank / truck unloading.
- M. All chemicals shall be delivered F.O.B. delivered. All cost for shipping, handling, insurance and related delivery charges must be included in the unit price for each contract item.
- N. Delivery Free period shall be 2 hours for all chemicals.
- O. Hours of delivery will be determined by FW.
- P. Regardless of the reason, the Contractor shall be solely responsible for spills, and or delivering chemicals to the wrong storage locations/tanks. Any and all cost associated with remediation, including, but not limited to Hazmat, site cleanup, and tank cleaning etc., shall be the responsibility of the contractor.
- Q. Contractors shall provide and maintain any and all special tools required to load or dispense chemicals. If required, contractor shall provide pre-set torque

wrenches; and will be solely responsible for damages, leaks, etc. caused by malfunctioning or improperly set tools.

- R. Delivery vehicles must be in good working order and compliant with all Federal, State, and local transportation laws and regulations. If Contractor intends to subcontract delivery to a third party carrier, the Contractor must submit the name of the carrier and a complete list of all state and interstate violations for which the subcontractor, its drivers and or its vehicles have been cited within the past 2 years.

### **1.11 Inspection**

FW reserves the right to inspect and test any chemical at any time during or after delivery. No inspection, test, approval or acceptance of any Commodity shall relieve Contractor from liability for defects or other failure to satisfy the requirements set forth in the Contract Documents.

### **1.12 Principals Only**

The use of Sub-Contractors, agents, etc. is prohibited. Fairfax Water will enter into contracts with Contractors whose primary business is the sale of the chemical for which the Contractor is submitting a bid.

## **2 STANDARD TERMS AND CONDITIONS**

### **2.1 Contract Term**

The Contract awarded as a result of this solicitation will be effective for a period beginning on the date of contract award and ending January 31, 2020.

### **2.2 Anti-Discrimination**

Contractor certifies to FW that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the Virginia Public Procurement Act.

A. During the performance of the contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.
- C. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization's religious character, or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided by law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

### **2.3 Antitrust**

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to FW all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FW.

### **2.4 Arrearage**

Contractor represents that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public body in the Commonwealth of Virginia, including but not limited to any obligation to pay taxes and/or employee benefits. Contractor further agrees that it shall make diligent efforts to avoid becoming in arrears during the Term of any Contract awarded hereunder.

### **2.5 Assignment of Interest**

The Contractor shall not assign any interest in any resulting Contract and shall not transfer any interest in the same without prior written consent of FW, which FW shall be under no obligation to grant.

### **2.6 Availability of Funds**

It is understood and agreed between the parties herein that FW shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

## 2.7 Compliance with Laws, Regulations and Codes

The Contractor hereby represents and warrants that:

- A. It is qualified and properly licensed to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing FW, the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

## 2.8 Contract Changes / Change Orders

- A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in this Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the purchasing contact. Contract changes shall be in writing. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW Project Manager.
- B. Changes can be made to the contract in any of the following ways:
  1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or

- b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to Fairfax Water's right to audit the Contractor's records and/or to determine the correct number of units independently; or
- c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the contract generally.

## **2.9 Contractor's Responsibilities**

- A. The Contractor shall be responsible for all products and/or services as required by this Contract. The use of subcontractors is prohibited unless Contractor receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties.
- B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the contract.
- C. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure, or its subcontractor's failure to protect such facilities and utilities.
- D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its Subcontractor(s). Replacements will be of equal or better quality than the damaged property, and all such work must be approved by FW's Project Manager.

## **2.10 Ethics in Public Contracting**

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a contract resulting from this solicitation, are proper and in accordance therewith.

### **2.11 Examination of Records**

Contractor agrees that in any resulting contract, either FW or its duly authorized representative shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to any resulting contract. This obligation shall expire five years after the final payment for the final service performed as a result of any and all contract(s) awarded pursuant to this solicitation, or until audited by FW, whichever is sooner. Contractor will provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

### **2.12 Governing Law; Venue; Waiver of Jury Trial**

Notwithstanding any provision to the contrary, this contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Contractor and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

### **2.13 Incorporation by Reference**

This Contract is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the Contract. Contractor acknowledges the VPPA and agrees to be bound by it. A copy of the VPPA is available for inspection at the Purchasing Department at FW. It is also available at the Virginia Department of General Services, Department of Purchases and Supply Website:

<http://www.eva.virginia.gov/pages/eva-vppa.htm>

### **2.14 Indemnification and Responsibility for Claims and Liability**

Contractor is bound by the following:

- A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.

- B. FW has no obligation to provide legal counsel or defense, or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- D. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any and all loss, including Attorneys' fees arising out of any such claim.

## 2.15 Insurance Requirements

- A. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.
- B. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.
- C. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract.
- D. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without

limiting the requirements set forth above, the insurance coverages will include a minimum of:

1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:

◆ General Aggregate Limit (Other than Products-Completed Operations)	\$1,000,000
◆ Products-Completed Operations Aggregate Limit	\$ 500,000
◆ Personal & Advertising Injury Limit	\$ 500,000
◆ Each Occurrence Limit	\$ 500,000
For Construction Contracts:	
◆ Directors & Officers – Errors & Omissions	\$2,000,000

- E. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage with a combined single limit of at least \$500,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries to members of the public and/or damage to the property of others arising from the Contractor's use of motor vehicles or other equipment and must cover both on-site and off-site operations.
- F. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

## 2.16 No Waiver or Estoppel

Neither the inspection by FW nor any of its employees, nor any payment of money, nor payment for, nor acceptance of any Commodity by FW, nor any extension of time shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or of any right to damage herein provided. No waiver of any breach of this Contract shall be held to be a waiver of any other subsequent breach. All remedies provided in this Contract to FW shall be construed as cumulative and shall be in addition to each and every other remedy herein provided. Neither FW, nor any officer, member, employee, or authorized representative of FW, will be bound, precluded, or estopped by any action, determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract by any officer, employee, member or authorized representative of the Owner, at any time either before or after final completion and acceptance of the Work and payment therefore from: (a) showing the true and correct classification, amount, quality, or character of the Commodities delivered, or that any determination, decision, acceptance, return certificate or payment was incorrect or

was improperly made in any respect, or that the Commodities or any part thereof do not in fact conform to the requirements of the Contract; (b) demanding and recovering from the Contractor any overpayment made to the Contractor or such damages as FW may sustain by reason of the Contractor's failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

## **2.17 Pass-through Price Increases and Decreases**

For annually renewable contracts:

- A. **Increases:** FW recognizes that the Contractor's sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof. Only the Contractor's direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the then current contract year.
- B. **Decreases:**
  - 1. Pass through price increases shall cease at the end of the then current contract year and contract pricing will return to the pre-pass through rate. The contractor will be eligible for and only upon request, the annual economic price increase as defined in subsection 3.3 above.
  - 2. Prior to the end of the then current contract year, the pass through increase shall be reduced or eliminated when and as the cause of the increase is reduced or eliminated.
- C. Pass through price increases will not be a substitute for poor planning by the Contractor. Pass through increase will not be allowed for the first six months of any contract year. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

## **2.18 Payment Clauses Required in All Contracts**

Section § 2.2-4352 of the Virginia Public Procurement Act requires the following:

- A. That any contract awarded by FW include the following clauses:
  - 1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:
    - a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or

- b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
  2. Offerors shall include in their offer submissions either: (i) if an individual contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
  3. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.
  4. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
- B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

## 2.19 Payment

- A. Invoices: All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or e-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor's FEIN. Invoices are not to be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.
- B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- C. Invoices: The Contractor shall submit invoices for items ordered, delivered and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or contract number and are subject to review and approval by FW Project Manager
- D. Partial Payments: Requests for partial payments or advanced payments shall be submitted with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Contractor must waive the requirement in order to remain in consideration.

- E. Refunds: If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor. Partial Payments: Requests for partial payments or advanced payments shall be submitted with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Offeror must waive the requirement in order to remain in consideration.
- F. Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

#### **2.20 Precedence of Terms**

These General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

#### **2.21 Price Firm Period**

Contract pricing shall be firm and fixed for the first 12 months of the contract.

#### **2.22 Price and Title**

All prices are for Commodities delivered F.O.B. the facility set forth on the Purchase Order and shall represent the entire cost to FW. Title for such Commodities shall pass to FW upon receipt and acceptance thereof at FW's designated facility.

#### **2.23 Purchase and Sale Transaction**

Any transaction for the purchase and sale of any Commodity shall be effected by FW's issuance to the Contractor of a Purchase Order, in which event the Contractor covenants and agrees to furnish all Commodities described therein in strict accordance with the terms and conditions of such Purchase Order and the other documents that together constitute the Contract.

## 2.24 Rider Clause

Subject to the mutual agreement between the parties, any contract awarded on the basis of this solicitation may be used by any public entity (to include jurisdictions comprising the Metropolitan Washington Council of Governments), to enter into a contract for the services described and defined herein. For single purchases, the contract may be used for up to 12 months from the actual date of contract award. For multi-year contracts, the contract may be used throughout the effective period of the contract. Contracts awarded as a result of this solicitation will be subject to these terms and conditions, and/or such terms and conditions as may be required by the controlling body for the public agency using the contract. Pricing shall be as offered by the successful Offeror and subsequently accepted by FW. However, to the extent that transportation cost vary, the contractor and the public entity may negotiate a markup or discount to reflect the true cost of transportation.

## 2.25 Taxes

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW's tax identification number is 54-6025290.

## 2.26 Termination of Contract

- A. **For Cause.** In the event that the Contractor: (1) fails to deliver any Commodity or Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any Commodity or Service which conforms in all respects to the requirements of the Contract; then FW, without prejudice to any other rights or remedies it may have at law or in equity (including its right to seek damages from the Contractor), shall have the right to terminate the Contract and any outstanding Purchase Orders by issuing a written notice of termination to the Contractor. Such notice of termination shall describe in reasonable detail the grounds for the termination and shall take effect immediately upon receipt by the Contractor.

If, after issuance of a notice of termination under this Section it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties shall be the same as if the notice of termination had been delivered under the provisions of subsection B (termination for convenience) hereof; provided, however, that the Contractor in such event shall be deemed to have received seven days prior written notice of such termination. Any compensation due the Contractor pursuant to subsection B shall be offset by the cost to FW of remedying the default by the Contractor. The Contractor shall in no event be entitled to receive any consequential damages or any anticipated profits with respect to Commodities not yet furnished to, and accepted by, FW as of the effective date of any such termination.

- B. For Convenience. FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subcontract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.

## 2.27 Virginia Freedom of Information Act

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act.

## 2.28 Warranty

- A. The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades.
- B. Materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of 12 months following date of final acceptance. Should any defect be noted by the FW, the Project Manager will notify the contractor of such defect or non-conformance. Notification will state either (1) that the contractor shall replace or correct, or (2) FW does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to FW and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.
- C. Work not conforming to these warranties shall be considered defective.

- D. This warranty of materials and workmanship is separate and independent from and in addition to any of the contractor's other guarantees or obligations in this contract.

**NOTE:** Any implied warranties, including but not limited to the warranty for "Merchantability and Fitness for A Particular Purpose" cannot be waived and are a mandatory part of this Contract.

### 3. SPECIAL TERMS AND CONDITIONS

#### 3.1 Delays

- A. By the Contractor: Unauthorized delays by the Contractor are prohibited. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by any means available to FW, including (but not limited to) liquidated damages, redeeming the Contractor's Performance Bond (or other security as agreed to by FW prior to contract award); and to recover any additional costs, lost funds and/or related expenses. This is not a limitation of FW's legal rights to recover damages due to Contractor default in any other way.
- B. By FW: The Contractor shall not be responsible for delays caused by FW, its agents, or other Contractors. To the extent that the Contractor is unable to proceed due to the actions or inactions of FW, its agents, employees or other Contractors, the Contractor shall be granted an extension to the installation schedule equal to the documented amount of time the Contractor was prevented from performing work. The Contractor shall not be eligible for damages as a result of FW delays.

#### 3.2 Force Majeure

If a delivery is delayed by Act of God, terrorism, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his subcontractors or supplier(s), a reasonable extension of time as FW or the Member deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, FW or the Member may in its sole discretion (i) extend the time for delivery of the Commodity; (ii) suspend the Contract in whole or in part and obtain one or more of the Commodities elsewhere for a time, or (iii) terminate the Contract; all without liability to Contractor on the part of FW or Member,

as the case may be. Contractor's request and justification shall be subject to such substantiation and further inquiries as FW or Member may require.

### **3.3 Time Is Of The Essence**

Time is of the essence: All chemicals shall be delivered within the time or times specified in this Contractor otherwise set forth in the applicable Purchase Order. Notwithstanding the foregoing, the Contractor shall not be deemed to have breached the terms and conditions of the contract Documents to the extent any delay is due to circumstances beyond its reasonable control and without the fault or negligence of the Contractor provided that the Contractor first shall have provided Fairfax Water with written notice (to include facsimile or e-mail) of any such delay within five days after the occurrence of events or circumstances causing the delay. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by obtaining the services of a qualified Contractor to complete the project and charge any additional or increased costs to the Contractor.

### **3.4 Contractor's Compliance and Safety Program**

- A. The Contractor shall comply with all applicable Federal, State, and local safety programs, regulations, standards, and codes, to include though not limited to:
1. The Virginia Uniform Statewide Building Code,
  2. Building Officials & Code Administrators (BOCA) codes (together with adopted International Codes),
  3. Virginia Department of Health (VDH) regulations,
  4. Virginia Department of Environmental Quality (DEQ) regulations,
  5. Virginia-OSH (VOSH) regulations, and
  6. National Electric Code (NEC).

4. CONTRACT TERM AND COMPENSATION

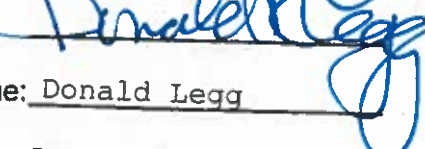
The term of this agreement shall be May 1, 2019 through January 31, 2020.

Sodium Bisulfite

\$1.23/ Gal

**FAIRFAX WATER**  
Procurement Department  
8570 Executive Park Avenue  
Fairfax, VA 22031

Phone: (703) 289-6261  
Fax: (703) 289-6262

By: 

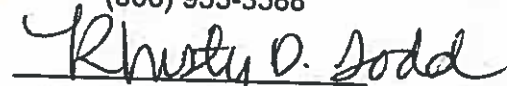
Name: Donald Legg

Title: Procurement Manager

Date: 4-30-19

**SOUTHERN IONICS, INC.**  
PO Box 1217  
West Point, MS 39773

Phone: (662) 494-3055  
Fax: (800) 953-3588

By: 

Name: KRISTY D. TODD

Title: Man. Corp. Adm.

Date: 4-29-19