

**RESOLUTION NO. 23-223**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH DESIGN PLASTIC SYSTEMS, INC. FOR THE PURCHASE OF TWO SODIUM HYPOCHLORITE TANKS FOR THE CITY'S WASTEWATER TREATMENT FACILITY IN THE TOTAL AMOUNT OF \$82,956.**

**BE IT RESOLVED** that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement with Design Plastic Systems, Inc. for the purchase of two sodium hypochlorite tanks for the City's Wastewater Treatment Facility in the total amount of Eighty-Two Thousand Nine Hundred Fifty-Six Dollars and 00/100 Cents (\$82,956.00) in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 14<sup>th</sup> day of September, 2023.

**CITY OF PANAMA CITY BEACH**

By:   
Mark Sheldon, Mayor

**ATTEST:**

  
Lynne Fasone, City Clerk

# PCB23-47 ITB HYPOCHLORITE STORAGE TANKS

## AGREEMENT

### HYPOCHLORITE STORAGE TANKS

**THIS HYPOCHLORITE STORAGE TANKS AGREEMENT** is made and entered into this 14<sup>th</sup> day of September, 2023, by and between the **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (City) and **DESIGN PLASTIC SYSTEMS, INC.** (Contractor or Vendor).

#### PREMISES

##### 1. SCOPE OF WORK

Contractor/Vendor will supply two (2) HDPE hypochlorite chemical storage tanks , as more particularly described in the Specifications listed in Section 11200 HYPOCHLORITE CHEMICAL STORAGE TANKS number PCB23-47 and the attached drawings provided during the bid process. Based on further correspondence dated August 30, 2023, the City further confirms the following specifications, which shall supersede and replace any conflicting requirements:

- Selection of opaque white resin in lieu of 1" insulation
- 18" PP Air Surge manway
- 304SS stainless steel tiedown system

If the Contractor/Vendor believes that any particular product is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Contractor/Vendor, the Contractor/Vendor must immediately notify the City's Representative in writing of this belief. If the City's Representative believes that the particular work/service/product is within the scope of the contract as written, the Contractor/Vendor will be order to and shall continue to supply the work/service/product as changed and at the cost stated for the work/service within the scope. The Contractor/Vendor must assert its right to an adjustment under this clause within thirty (30) days from the date of the receipt of this agreement.

##### 2. COMPENSATION

As compensation for supplying the product contemplated herein and performance rendered by the Contractor/Vendor of its duties and obligations hereunder, City shall pay Contractor/Vendor according to the not to exceed bid unit bid price submitted on PCB23-47 HYPOCHLORITE STORAGE TANKS. The City shall pay to the Contractor/Vendor as full consideration for the delivery of product required by this Agreement, at the UNIT PRICE contained in the Contractor's cost proposal, upon the basis of actual measured quantities as the same may be finally determined by the City Manager or his/her designee(s).

- A. Extra and/or Additional Work Changes – Should City at any time during the progress of said work request alterations, deviations, additions, or omissions from said specifications or other contract documents, it shall be at liberty to do so by written authorization to Contractor/Vendor, and the same shall in no way affect or make void the Agreement. The unit price of any such addition or deletion from the contract Bid price, must be mutually agreed upon by both parties.

## PCB23-47 ITB HYPOCHLORITE STORAGE TANKS

### 3. PAYMENT

Contractor/Vendor will invoice for payment to the City when delivery and satisfactory inspection of HYPOCHLORITE STORAGE TANKS has been completed. The invoice(s) shall be delivered to accounts payable at City Hall, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413.

### 4. TERM

Unless terminated sooner pursuant to the provision of the Termination clauses contained in paragraph 6, and subject to the availability of funds appropriated for this purpose, this Agreement shall take effect on the executed date of award and be valid until the delivery and acceptance of the Hypochlorite storage tanks.

### 5. TERMINATION OF CONTRACT

- A. City Termination for Cause – The Agreement may be terminated by the City for cause in the event of any breach hereof, including, but not limited to, Contractor/Vendor's: (1) failing to carry forward and complete the Work as provided herein; (2) failing to comply with applicable laws, regulations, permits, or ordinances; (3) failing to timely correct defective Work; (4) making a general assignment for the benefit of its creditors; (5) having a receiver appointed because of insolvency; (6) filing bankruptcy or having a petition for involuntary bankruptcy filed against it; (7) failing to make payments when due to subcontractors, vendors, or others for materials or labor used in the Work; (8) making a material misrepresentation to the City regarding the Work; (9) arrest or conviction of felony or fraud, or (10) any other material breach of this Agreement. In such event, the City shall provide Contractor/Vendor with written notice of its intention to terminate this Agreement, stating the nature of the deficiency and the effective date of termination. At the City's sole judgement and discretion, the City may afford Contractor/Vendor an opportunity to cure said deficiency, in which event the notice shall specify the time allowed. Upon termination, the City may take possession of the premises and of all materials thereon and finish the Work by whatever means it seems expedient.
- B. City Termination for Convenience – Notwithstanding any other provision hereof, the City may at any time terminate this Agreement or any Work issued under it, in whole or in part, without cause, upon thirty (30) days advanced written notice to Contractor/Vendor. In such event, Contractor/Vendor shall be compensated for any Work performed prior to the date of termination and for materials that were ordered prior to receipt of notice of termination that cannot be returned to the vendor, which shall become City property. Upon receipt of notice, Contractor/Vendor shall discontinue Work on the date and to the extent specified therein and shall place no further orders for materials, equipment, services, or facilities, except as needed to continue any portion of the Work not terminated. Contractor/Vendor shall also make every reasonable effort to cancel, upon

## PCB23-47 ITB HYPOCHLORITE STORAGE TANKS

terms satisfactory to the City, all orders or subcontracts related to the terminated Work. Contractor/Vendor may not claim any compensation not specifically provided herein, including, but not limited to loss of anticipated profits, idle equipment, labor, and facilities; or any additional claims of subcontractors and vendors.

### 6. COMPLIANCE WITH LAWS

The Contractor/Vendor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor/Vendor shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. The Contractor/Vendor shall protect and indemnify the City of Panama City Beach and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Contractor/Vendor, its representatives, sub-contractors, sub-consultants, professional associates, agents, servants, or employees. Additionally, Contractor/Vendor shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to this contract from the federal government, State of Florida, Bay County, or municipalities when legally required, and maintain same in full force and effect during term of the contract.

### 7. WARRANTY

The Contractor/Vendor agrees that, unless otherwise specified in the specifications of the invitation to bid, the product furnished as a result of this invitation and award thereto shall be covered by the most favorable commercial warranty the Contractor/Vendor gives to any customer for comparable quantities of such products and that the right and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other provision of the invitation/offer.

Manufacturer Snyder's standard warranty offers a repair or replacement for 3 years on the tanks and 1 year on the parts. Vendor is a stocking distributor of all replacement parts and in the event of a part failure, Vendor will provide replacement parts at discounted rates after the 1 year timeframe.

### 8. INSURANCE AND INDEMNIFICATION

Contractor/Vendor shall at its own expense maintain in force during the term of the contract the insurance on policies and insurers acceptable to the City as required by the City's Insurance Requirements.

- i. Within thirty (30) days of the date of the Award, and thereafter upon the written request of the City, Contractor/Vendor shall furnish to the City such certificates of coverage and certified copies of policies pursuant to the City's Insurance requirements in order to satisfy this provision, the documentation required by this part must be sent to the following address: ATTN: RISK MANAGEMENT DIRECTOR, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413.

## PCB23-47 ITB HYPOCHLORITE STORAGE TANKS

- ii. Regardless of the coverage provided by any insurance, the successful Contractor/Vendor shall indemnify, save harmless and defend the City, its agents, servants, or employees from and against any and all claims, liability, losses and/or causes of action which may arise from any negligent act or omission of the successful Contractor/Vendor, its sub-contractors, agents, servants, or employees during the course of performing services or caused by the goods provided pursuant to these Bid documents and/or resultant contract.

If any third-party claim is made against the City that, if sustained, would give rise to indemnification liability of the Contractor/Vendor under this Agreement, the City shall promptly cause notice of the claim to be delivered to the successful Contractor/Vendor and shall afford the Contractor/Vendor and its counsel, at the Contractor's/Vendor's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this paragraph shall survive the termination of this Agreement.

### **9. ATTORNEY'S FEES**

In the event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at all trial and appellate levels and at any mediation or arbitration.

### **10. TIME**

Time is of the essence in this Agreement.

### **11. FORCE MAJEURE**

The Contractor's/Vendor's failure or inability to perform the stated scope of work at any time as a result of circumstances beyond its control, such as, but not limited to, war, terrorism, strikes, fires, floods, hurricanes, acts of God, power failures, or damage or destruction of any facility related thereto, shall not be deemed a breach of this Agreement.

### **12. REMEDIES**

In the event of failure of the Contractor/Vendor to deliver product in accordance with the contract terms and conditions, the City, after due written notice, may procure the products from other sources and hold the Contractor/Vendor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have. Failure to cure a breach of a material term hereunder within 24 hours of Contractor's/Vendor's receipt of written notice thereof shall entitle the City to terminate this Agreement. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Florida.

### **13. ASSIGNMENT**

This Agreement is not assignable.

PCB23-47 ITB HYPOCHLORITE STORAGE TANKS

**14. SEVERABILITY**

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**15. CHOICE OF LAW & VENUE**

This Agreement shall be governed by the laws of the State of Florida. Any legal proceeding regarding this Agreement shall be brought in the 14<sup>th</sup> Judicial Circuit in Bay County, Florida.

**16. MODIFICATIONS**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Contractor/Vendor.

**17. WAIVER**

Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the City of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms and conditions of this Agreement.

**18. NOTICES**

Any notice required by this Agreement shall be directed to the parties as follows:

A. As to City:

City Representative: Leah Bailey

Title/Position: Utilities Business Manager

17007 Panama City Beach Parkway, Panama City Beach, FL 32413

Phone: (850) 233-5100, ext. 2420

B. As to Contractor/Vendor:

Contract Representative: Shawn McNally

Title/Position: Manager

Email Address: smcnally@designplasticsystems.com

Mailing Address: 2560 Boulevard of the Generals Norristown, PA 19403

Phone: Office: 610-666-0940 Cell: 810-689-8108

**19. ENTIRE AGREEMENT**

This Agreement, and any exhibits or appendixes attached hereto and incorporated herein, constitutes the entire agreement between parties pertaining to the subject matter hereof,

## PCB23-47 ITB HYPOCHLORITE STORAGE TANKS

and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written, and there are no representations, warranties, covenants or other agreements among the parties.

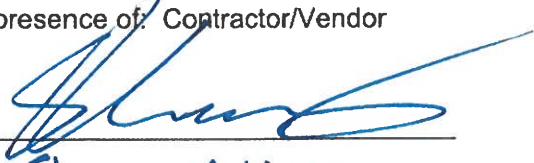
The term "Agreement" means and includes the following documents, all of which are incorporated into this Agreement by reference:

- Addendum to Agreement
- Advertisement for Bids
- Information for Bidders
- Bid Proposal Form
- Drug Free Work Place Statement
- Public Entity Crimes Statement
- Non-Collusion Affidavit
- E-Verify
- Terms and Conditions
- Notice of Award
- Agreement
- General Conditions
- Reference Standards
- Definitions and Standards
- Submittals
- Start-up
- Operation and Maintenance Data
- Warranties and Bonds
- Appendix A – Insurance Requirements
- Appendix B – Existing Hypochlorite Storage Tanks Shop Drawings
- Appendix C – Tax Exemption Certificate

PCB23-47 ITB HYPOCHLORITE STORAGE TANKS

IN WITNESS WHEREOF, the Contractor/Vendor has executed this Agreement as of the day and year first written above.

Signed in the presence of: Contractor/Vendor

Witness 1: 

(Print Name): Shawn McNally

Witness 2: 

(Print Name): MARYALICE SNARPONIS



By: Design Plastic Systems inc.  
Contractor/Vendor

THE CITY OF PANAMA CITY  
BEACH, FLORIDA,  
a municipal corporation

By:   
Drew Whitman, City Manager

ATTEST:

  
City Clerk



## ADDENDUM TO AGREEMENT

The City of Panama City Beach's (hereinafter the "City") purchase of two hypochlorite storage tanks pursuant to the attached agreement is conditioned upon the Vendor, Design Plastic Systems, Inc., agreeing to the terms and conditions set forth herein. To the extent of any conflict with provisions in the Vendor's standard terms and conditions as set forth in Vendor's agreement, the provisions in this Addendum will prevail. Collectively, the attached agreement (including other terms or documents or information incorporated by reference) and this Addendum shall be referred to as "this Contract". This Addendum is intended to supplement and supersede Vendor's terms and conditions dated September 2020 where in conflict with this Addendum.

1. **SCOPE OF SERVICES.** Vendor shall provide the products and services set forth in its proposal and the Hypochlorite Storage Tanks Agreement ("the Agreement") dated September 14, 2023. In the event that the Vendor's terms and conditions delivers terms or services above and beyond those required by the Agreement, the Vendor's terms and conditions shall control. In the event that the Vendor's terms and conditions provide support or services less favorable to the City, the Agreement shall control.

2. **PAYMENT.** The City is a local governmental entity subject to the Local Government Prompt Payment Act, §218.70, *et seq.*, Fla. Stat. and payment by the City shall be made in compliance with said Act. VENDOR agrees to invoice the City no later than sixty (60) calendar days after the completion of the corresponding payment condition set forth in the agreement. The City will not be obligated to make payment against any invoices submitted after such period. Payment shall not constitute acceptance. Original invoices shall be submitted and shall include: purchase agreement number from the Purchase Order, purchase order number, line item number, Order number, part number, complete bill to address, description of Software and Services, quantities, unit price, extended totals, and any applicable taxes or other charges. For payment, VENDOR must render original invoice to the City of Panama City Beach, Finance Department, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413.

3. **NON-APPROPRIATION.** All funds for payment by the City under this Contract are subject to the availability of an annual appropriation for this purpose by the Panama City Beach City Council. In the event of non-appropriation of funds by the Panama City Beach City Council for the goods and/or services provided under this Contract, the City will terminate this Contract, without termination charge or other liability, or other cost or expense on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods and/or services covered by this Contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Contract, Vendor on thirty (30) days prior written notice shall accept cancellation, but failure to give such notice shall be of no effect and The City shall not be obligated under this Contract beyond the date of termination.

4. **TERMINATION.** All provisions in this Contract providing for payment by the City as liquidated damages or as a cancellation fee or based upon acceleration of fees, if any, are hereby deleted. Upon termination of this Contract, the Vendor shall pay the City a pro rata refund of payments made unless termination is based upon breach of the Contract by the City. All provisions that provide a security interest in property being purchased or owned by the City, if any, are hereby deleted. All provisions that authorize the Vendor to repossess property or take action outside of court proceedings in response to a The City breach of contract, if any, are hereby deleted.

5. **LIABILITY.** All provisions that require the City to assume liability or to indemnify, defend or hold harmless are hereby deleted. The City does not intend to alter, extend or waive any defense of sovereign immunity to which it may be entitled under the Florida Constitution, §768.28, Fla. Stat. or otherwise provided. Neither party shall be liable for any indirect, consequential, exemplary, special, incidental, reliance or punitive damages (including lost business, revenue,

profits or goodwill) arising in connection with this Contract.

6. **DISPUTES.** All provisions requiring mandatory alternative dispute resolutions (including but not limited to arbitration or mediation) are hereby deleted. This Contract is to be construed and interpreted according to the laws of the State of Florida and all legal proceedings shall be filed in Bay County, Florida. The statute of limitations set forth in the Laws of Florida shall apply. Each party shall bear its own attorneys' fees and costs.

7. **NOTICE.** In the event of breach or termination, in addition to notice provisions set forth in this Contract, a copy of notice to the City shall be provided to the City Manager, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413.

8. **ASSIGNMENT.** Vendor may neither assign nor factor any rights in nor delegate any obligations under this Contract or any portion thereof without the written consent of the City.

9. **ACCESSIBILITY.** Any information, records, data or documentation provided by the Vendor that is made available to the city or to the public shall be provided in a format compliant with ADA accessibility standards. For purposes of this requirement, ADA accessibility standards shall mean the world wide web consortium (w3c) wcag 2.1 AA accessibility guidelines.

10. **ENDORSEMENT.** All provisions that allow another to use the City's name in any advertising, endorsement or promotion are hereby deleted.

11. **ELECTRONIC SIGNATURES.** Unless waived by the City, this Contract shall not be executed via electronic signatures.

12. **PUBLIC RECORDS.** VENDOR understands and agrees that The City is a public entity subject to the Florida Public Records Law. All confidentiality provisions set forth in the contract are subject to disclosure pursuant to the Florida Public Records Law. VENDOR agrees to retain public records, and upon request by The City provide to The City those public records requested, which retention and access shall be pursuant to Chapter 119, Fla. Stat.. A request to inspect or copy public records relating to this Contract for Services must be made directly to the City and VENDOR shall not release a public record in response to a request arising from anyone other than the City. To the extent VENDOR is "acting on behalf of the City" VENDOR shall be subject to the following provisions:

(i) As required by §119.0701, Fla. Stat., VENDOR shall (1) Keep and maintain public records required by the City to perform the Services; (2) Upon request from the City, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law; (3) Ensure that public records are exempt or confidential and exempt from public records disclosure requirements that are not disclosed except as authorized by law for the duration of the Contract and following completion of the Contract if the VENDOR does not transfer the records to the City; (4) Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the VENDOR or keep and maintain public records required by the City to perform the Service. If the VENDOR transfers all public records to the City upon completion of the Contract, the VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the VENDOR keeps and maintains public records upon completion of the contract, the VENDOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(ii) The VENDOR who fails to produce the public records as required by §119.0701, Fla. Stat. may be subject to penalties pursuant to §119.10, Fla. Stat. and civil action pursuant to §119.0701(4) and such failure to produce shall be considered a material breach of this Contract by VENDOR. In the event of such breach, in addition to all other remedies available, VENDOR shall pay to The City all incidental and consequential damages arising from such breach, including

attorneys' fees and costs incurred by the City in defending a public records action as well as those assessed against the City in such public records action.

(iii) The term "public record" as used in this section includes all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics or means of transmission, made or received pursuant to law or ordinance and in connection with the transaction of official business by or on behalf of the City. Guidance as to whether something is a "public record," whether the public record is confidential or exempt, and the applicability or implementation of the provisions of Florida public records law, may be sought from the City's City Attorney's Office or the City Clerk's Office; provided that the VENDOR hereby agrees that neither the City Attorney's Office nor the City Clerk's Office is providing legal or other advice to be relied upon by VENDOR.

**IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AS FOLLOWS: City Clerk, 17007 Panama City Beach Parkway, Panama City Beach, Florida 32901, Telephone: 850.233.5100, Email: [cityclerk@pcbfl.gov](mailto:cityclerk@pcbfl.gov).**

13. **E-VERIFY.** The Vendor understands that contracts with the City are subject to Florida Statutes, §448.095(2) and the Vendor agrees to comply with the requirements of said statute. The Vendor shall register with the E-Verify system operated by the United States Department of Homeland Security and shall verify through the E-Verify system the employment eligibility of persons providing labor, supplies or services in exchange for salary, wages or other remuneration as required by §448.095(2), Fla. Stat. Notwithstanding anything to the contrary in this contract, the City reserves the right to terminate this contract in accordance with §448.095(2), Fla. Stat.

IN WITNESS WHEREOF, the parties set forth above have set there hand and seal.

**The City:**


The City of Panama City Beach, a Florida municipal corporation

By:   
Drew Whitman  
As City Manager

Date: 9-18-23

**VENDOR:**

Design Plastic Systems inc

By:   
Name: Shawn McAlilly  
As Authorized Agent

Date: 9/7/2023

**ATTEST:**

  
Lynne Fasone, City Clerk



August 9, 2023

**City of Panama City Beach City Hall  
17007 Panama City Beach Parkway  
Panama City Beach, FL 32413**

Attention: Carrie Jagers - Purchasing Manager – Purchasing@pcbfl.gov

Subject: Hypochlorite Storage Tanks  
QT# 23S-SN0782-104

**SCOPE OF WORK:**

QTY	Description	Price
1	<b>10,500 gallon 142" diameter x 169" height - Vertical Storage Tank Model # 5330000N</b> 1.9 Specific Gravity, HDLPE 18" Manway Vented PE (3) 2" PVC Bulkhead w/Viton 2" Sumo - Drain Fitting Titan/Viton (2) 2" PVC Bolted TLB Viton 4" U-Vent w/viton Sight Gauge Assembly w/Viton 2" Flex Connection w/Viton Galvanized Seismic Tie-down System (anchor bolts by others) (does not include Wet Stamped Calcs, can be provided for additional charge) Standard Lifting Lugs 1" Foam Insulation and Mastic Coating Urethane Foam Repair Kit Stencil 6" Letters: Sodium Hypochlorite Factory Hydrotest ASTM Documentation Protective packaging for transport Manufacturer Warranty from date of shipment – see attached Offloading of tank by others Tank approval drawing to be generated upon receipt of order	\$41,478/each
1	<b>10,500 gallon 142" diameter x 169" height - Vertical Storage Tank Model # 5330000N</b> 1.9 Specific Gravity, HDLPE 18" Manway Vented PE (3) 2" PVC Bulkhead w/Viton 2" Sumo - Drain Fitting Titan/Viton (2) 2" PVC Bolted TLB Viton 4" U-Vent w/viton Sight Gauge Assembly w/Viton 2" Flex Connection w/Viton Galvanized Seismic Tie-down System (anchor bolts by others) (does not include Wet Stamped Calcs, can be provided for additional charge) Standard Lifting Lugs Additional Anchor 1" Foam Insulation and Mastic Coating Urethane Foam Repair Kit Stencil 6" Letters: Sodium Hypochlorite Factory Hydrotest ASTM Documentation Protective packaging for transport Manufacturer Warranty from date of shipment – see attached Offloading of tank by others Tank approval drawing to be generated upon receipt of order	\$41,478/each

**Total: \$82,956.00**

**TERMS:**

1. Current shipment could be made 10-14 weeks after receipt of a signed, unqualified approval drawing. Please note that shipment times are subject to change.
2. FREIGHT ALLOWED
3. Manufacturer's storage fees will be assessed if tank is not picked up or released for immediate shipment within 30 days of tank completion.
4. Federal, State and Local taxes are NOT INCLUDED.
5. All tank orders are non-cancelable and non-returnable.
6. Payment terms for are net 30 days.
7. Price is valid for a period of 60 days.
8. Design Plastic Systems standard terms and conditions apply (see attached) and our pricing is solely based on these terms.
9. All warranties are by the tank manufacturer.
10. 4 Hour Site Visit INCLUDED.

Sincerely,  
DESIGN PLASTIC SYSTEMS

Shawn McNally

Cc: Erick Shaw

## DESIGN PLASTIC SYSTEMS, INC. – STANDARD TERMS AND CONDITIONS

1. **TERMS:** Design Plastic Systems, Inc.'s (hereinafter referred to as "Seller") pricing is based solely upon these terms and conditions, the terms on Seller's proposal/quote and any other supplemental terms which are referenced within Seller's proposal. **Seller shall supply the materials/perform the work described in Seller's proposal in accordance with these terms and conditions only.** Any additional terms and conditions contained within, or referenced within, Buyer's purchase order/subcontract, the prime/principal contract (if applicable) or any other terms, conditions, or provisions inconsistent with those stated herein shall be deemed ineffective. It is mutually agreed that all terms, conditions and provisions appearing on, attached to, or referenced within the Buyer's purchase order (or other similar form of agreement) except the description and specification of goods ordered (quantity, order number, shipping address and tax exemption certificate), shall be ineffective, and in lieu thereof, the terms and conditions stated herein shall govern all orders and shall be applicable thereto with the same force and effect as if they physically appeared thereon. The following actions shall not be construed as an acceptance or approval of any terms, provisions, conditions or requirements contained within or referenced within any such purchase order, contract or other similar document of Buyer or other third party: an acknowledgement of any such order or other communication (whether written or electronically), the commencement of shop drawings, the fabrication of (or ordering of) products/materials, the signing of Buyer's purchase order/subcontract etc., the making of deliveries pursuant thereto or the performance of any other services. There shall be no other form of acceptance of other terms and conditions, and no waiver, alteration or modification of the terms and conditions herein shall be binding unless by separate written agreement, signed by both parties, which specifically describes the Seller's agreement to allow modifications and departures from Seller's standard terms and conditions. If Seller is required to provide pricing to a third-party website or directly to Buyer in a format that prevents Seller from sending a proposal and these terms and conditions, it is understood that Seller's pricing is in accordance with Seller's terms and conditions only. Similarly, if Seller is required to provide digital/electronic signatures and/or the Buyer has prevented Seller from attaching any additional documents, making changes, referencing the proposal, or signing in accordance with Seller's proposal, terms and conditions and clarifications, it is understood that Seller's signature upon the document is made for the purpose of confirming the order and for receipt of payment only. Seller's signature does not indicate agreement or intent to comply with additional terms and conditions. Seller reserves the right to provide written signatures in lieu of digital signatures (DocuSign etc.) Any document that Buyer later requires to be executed in order to induce payment, delivery or work that attempts to void the terms and conditions contained herein, or on Seller's proposal, is signed in accordance with Seller's terms and conditions only.

2. **SCOPE OF WORK:** Seller's proposal is Seller's interpretation of the project. Seller's scope of work is limited to the materials and/or services described in Seller's proposal. Seller does not guarantee compliance with any other documents. There are no additional responsibilities, representations, duties, obligations, submittals, warranties/guarantees, services, approvals, or work included in Seller's proposal or pricing, including, but not limited to, field measurements, certifications, testing, inspections, engineering, as-builts, supervision/protection, bonds, overtime work, verification/investigation of site or field conditions, permits, licenses, clearances, coordination, meetings, reports, onsite work/installation (unless specifically listed in Seller's proposal), compliance with codes, regulations, audit rights, ordinances, LEED requirements, Buy American requirements, safety documents or samples. Compliance with any additional terms, conditions, responsibilities, specifications, plans, drawings, addenda, modifications, statutes, manuals, documents, etc. is the responsibility of Buyer, unless specifically included in Seller's proposal. The forwarding of project drawings, plans, specifications, contract documents, ftp sites/dropbox links, etc. or other documents does not confer or shift liability to Seller to review and/or comply with the documents. **UNLESS SPECIFICALLY INCLUDED IN SELLER'S PROPOSAL,** Buyer is responsible for: (1) review and compliance with additional drawings, terms, conditions, specifications, plans, bid documents, documents, contract documents, addenda, etc., (2) determining/discovering errors and omissions, defects, discrepancies, deviations, inconsistencies, omissions, substitutions, etc., (3) reviewing field conditions and providing/verifying field measurements/dimensions and (4) coordination. Seller's work is not subject to, and Seller cannot guarantee compliance with any additional requirements, especially those which are either presented after Seller has provided their proposal, or those that are never presented to Seller.

3. **ACCEPTANCE:** All proposals are offered for prompt acceptance and are subject to change without notice. Pricing is valid for a period of 30 days, or as otherwise noted on Seller's proposal. Buyer's acceptance may be in the form of a verbal or written direction to proceed, the issuance of a letter of intent, purchase order or other similar document, approval of shop drawings, release for fabrication or signature upon Seller's proposal. Buyer's acceptance confirms (1) approval of Seller's proposal, (2) Buyer's approval of the materials for Buyer's intended application, (3) Buyer's agreement to these terms and conditions and (4) indicates Buyer's desire to purchase the goods/services and make full payment for them.

4. **SERVICES:** If Seller's proposal includes services, all work is non-union, open shop. Additional charges may apply if Seller is later informed of prevailing wage status or other site restrictions/requirements. Scheduling of on-site services is subject to on-site conditions, weather conditions, receipt of full initial payment (if applicable), governmental restrictions, COVID-19 restrictions, and crew availability.

5. **SHOP DRAWINGS:** If included in Seller's proposal, one (1) set of electronic shop drawings is included in Seller's pricing. Any revisions will increase lead time and may be subject to a price adder. When completed, shop drawings will be forwarded to Buyer for review and approval. Buyer is solely responsible to review the shop drawings and confirm compliance with any additional terms, conditions, requirements, drawings, plans, specifications, etc., as the materials/services will be provided/completed in accordance with the approved shop drawings only.

6. **ADDITIONAL WORK & ALTERATIONS:** Should Buyer request a change to the work, including, but not limited to, design, material, quantity, delivery date or any other additional work, or should Buyer otherwise delay or interrupt the progress of work hereunder, then Seller shall be reimbursed for the additional expenses. Any additional work may be subject to a price adder and/or extension of time. Additional work is not subject to approval by others. For custom materials with shop drawings, Seller cannot accept changes after receipt of drawing approval.

7. **CHANGE ORDERS:** All change orders shall be paid net 30 days with no exceptions. Change orders are not subject to approval by a third party.

8. **CANCELLATIONS:** When an order is placed with Seller, the order is not subject to cancellation except upon such express terms as will satisfy all losses or costs incurred, commitments undertaken to date of cancellation and Seller's proportionate profit on work done. Reinstatement of cancelled orders shall be on renegotiated basis, subject to then current conditions following satisfaction of all cancellation charges. All custom and fabricated products are non-cancellable. Any cancellation charges are to be paid net 30 days firm.

9. **TAXES, PERMITS, LICENSES & FEES:** As stated on the face of Seller's proposal, tax has not been included in

**Seller's pricing and all taxes on this transaction will be paid by the Buyer**, whether or not billed, collected by or charged by Seller, unless valid exemption certificates are furnished by Buyer. Delays in supplying tax exempt certificates may be subject to penalty (to be paid by Buyer). If Seller agrees to obtain any additional permits, licenses, site specific requirements, PPE, clearances, credentials, or fees which are not included in Seller's proposal, Buyer shall pay all costs associated with obtaining those within 30 days and acknowledges and agrees to all time delays associated with same.

**10. PAYMENT TERMS:** Payment terms shall be Net 30 days with approved credit, unless otherwise noted on Seller's proposal, acknowledgement and/or invoice. No cash discount is to be taken on transportation, tax or special handling charges. Cash discounts must be pre-approved by Seller in writing. Payment shall not be subject to additional contingencies, third party payment companies, additional Buyer payment procedures, two party checks, trust funds, submittals not included in Seller's scope of work or approvals and shall not be withheld. **Seller does not accept 'pay when paid' clauses or retainage.** Buyer is responsible for full payment; Seller does not agree to assume the risk of non-payment by any third party. **Payment by credit card will have a 3% convenience fee added to the total.**

**11. LATE PAYMENTS:** All overdue unpaid balances will be charged 1 ½ % interest per month (or part thereof). Additionally, Seller reserves the right to hold shipment and/or installation of any product if Buyer's account is not current.

**12. DELIVERY & DELAYS:** Seller does not accept 'Time is of the Essence' clauses (or similar clauses of the same meaning which assign penalties for missing deadlines, delays or delayed shipment), however, Seller always endeavors to perform in a timely manner. Estimated lead times are contained within Seller's proposal. Shipment/installation will be made as near specified date as possible. Seller does not guarantee delivery dates, installation dates, completion dates or submittal lead time for standard or custom products. Additionally, Seller cannot guarantee compliance with any project/construction schedules, cannot expedite fabrication/shipment/installation, and does not accept liability for missing deadlines/delays, especially for materials/installation projects where Seller's lead time is contingent upon receipt of unqualified, signed approval drawings and release by Buyer. Seller is not liable for any delays, including those arising from acts of God, strikes, accidents, lock-outs, global pandemics, quarantines, casualties, the intervention of governmental agencies, fires, floods or any other cause beyond Seller's control. **DELAYS BY BUYER:** If Buyer delays the manufacture or shipment of materials, or installation/other services for a period of more than thirty days, Seller reserves the right to place the materials in storage and to invoice the Buyer for all storage and other costs incurred, including lost profits, equipment rentals and the completed materials. If the materials are custom, the Buyer will receive an invoice for the full amount of the materials, as well as the other fees and costs listed above, to be paid net 30 days firm.

**13. TRANSIT DAMAGE:** All materials are shipped F.O.B. shipping point with any claims for damages in transit to be made in writing by Buyer to the transportation company within 24 hours of receipt. Seller has no responsibility for freight claims, damaged goods, or replacements.

**14. RETURNED GOODS:** Seller will not accept return goods without prior written authorization by Seller. All custom or fabricated materials are non-returnable and non-cancellable. Any restocking fees or credits will be at Seller's sole discretion. All returns are subject to inspection by Seller.

**15. WARRANTIES/GUARANTEES:** Seller makes no warranties or guarantees which extend beyond the description herein. In no event shall the obligation of Seller extend beyond the repair or replacement of any material(s) sold by Seller, which proves to have been defective, and the obligation shall only apply if the material(s) is returned to the destination (designated by Seller) with all transportation charges prepaid and is found upon inspection to have been defective. **All material warranties are limited to the warranty supplied by the manufacturer/supplier and run from date of shipment from the factory. Seller warrants all new installations for one (1) year from date of initial installation (unless Seller's proposal provides additional information/options). All repair work will be done as a 'best efforts repair' and is not warranted by Seller. The warranty for this proposal is only valid if full payment has been received per Seller's payment terms.** THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Written notice of claimed defects must be given by the Buyer to the Seller within five (5) days after delivery and/or Seller's installation. Seller makes no representations as to existing conditions and there are no other warranties or guarantees included in Seller's pricing.

**16. LIMITATION OF LIABILITIES:** In no event shall Seller be liable for liquidated damages, punitive damages, special damages, consequential damages, attorneys' fees, costs, back charges, fees, penalties, losses, liabilities, expenses, interest, or other damages. Seller's liability on any claim (including but not limited to negligence, breach of contract or indemnification) arising out of or connected with the project or Seller's terms and conditions shall not exceed the price in Seller's proposal. Seller does not accept responsibility for the inaccurate work of others.

**17. INSTALLATION:** All materials in Seller's proposal shall be installed by Buyer, and at Buyer's expense, unless installation/onsite work is specifically listed in Seller's proposal (and Buyer elects the installation option) or the parties agree to installation later by separate written agreement. If installation is included in the proposal, Seller's pricing is based on one mobilization/trip to the field, unless otherwise indicated. If additional trips or onsite modifications are required, they will be subject to a price adder and time extension (to be paid net 30 days).

**18. PATENT PROTECTIONS:** If items are manufactured in accordance with designs, blueprints, drawings, samples, specifications, etc. that are supplied by Buyer, the Buyer shall indemnify and save Seller harmless from any and all claims, damages, costs, expenses, injuries or losses arising out of claims of Patent infringement because of manufacture, use or sale of such products. Seller shall indemnify Buyer from 3<sup>rd</sup> party patent litigation on those items of its design, purchase, or resale.

**19. OFF QUANTITIES:** With respect to all items manufactured in accordance with designs, blueprints, drawings, samples, specifications, or any product run supplied by Buyer, Buyer will accept under and over runs on each item not exceeding 10% of the quantities ordered and the billings are to be adjusted accordingly.

**20. BLANKET ORDERS:** All blanket orders for materials specially ordered by Seller for Buyer will be accepted on a non-cancellable basis. If, for any reason, open balances of such orders are not released by Buyer or if a blanket order is not renewed within one year, Seller shall have the option to invoice in full (without release or shipping instructions) for any outstanding balances.

**21. BACK CHARGES/SET OFF:** In no event shall Seller, or any of Seller's vendors, be liable for back charges without both prior written notice from Buyer and written pre-authorization by an officer of Seller. Back charges are not applicable if Buyer's account is not paid in full and there is no right of set off.

**22. LIEN WAIVERS:** If required by Buyer, all lien waivers will be signed upon payment or contingent upon receipt of payment. Seller's signature is for purposes of confirming payment amount only. Any additional terms contained within these documents are not applicable and Seller's signature does not indicate agreement to any additional terms, conditions, or documents.

**23. INSURANCE:** If proof of insurance is requested by Buyer, Seller shall supply their general coverage, listing the certificate



holder as requested by Buyer. If any additional coverage is required beyond the Seller's general coverage, all costs to obtain coverage, the premiums and a 15% administrative fee will be added to the price in Seller's proposal. Any other modifications, if allowed by Seller's insurance company, may be subject to a price adder. A Notice of Cancellation is a \$300 price adder.

24. **THIRD PARTIES:** This agreement between by Seller and Buyer does not require that Seller be bound to, obligated to, or forced to assume any terms, conditions, or responsibilities between Buyer and any third party.

25. **THIRD PARTY PROGRAMS:** Seller reserves the right to opt out of the use of third-party billing, insurance, or project management software. If later required to use these services, all costs will be paid by Buyer, in addition to a 15% administrative fee for compliance.

26. **TITLE:** Title to any and all goods/services furnished by Seller (or its suppliers) shall remain vested in Seller until Seller has received payment in full. Should Buyer fail to make payment in full for any goods/services in the manner provided by Seller, Seller may repossess and take away said goods. For tax and insurance purposes, Buyer agrees to report and pay taxes and to provide adequate insurance on such products as though title hereto had vested in Buyer.

27. **JURISDICTION/VALIDITY:** These terms and conditions are to be governed and construed according to the laws of the State of Pennsylvania. If any of these conditions should be held invalid, the remainder of the conditions shall not be affected.

28. **LEGAL RIGHTS/WAIVERS:** Seller does not waive or limit any legal rights without consideration for the waiver. This includes Seller's right to appropriate legal action the right to file a lien, the right to a jury trial and/or forum non conveniens. Failure by Seller to enforce any provision in this document shall not constitute a waiver thereof.

29. **EXECUTION/CONFLICTS:** Seller's proposal becomes the entire contract and no agreement or understanding, oral, or written, in any way purporting to modify, replace or supersede the terms and conditions herein shall be binding on Seller, unless agreed to in accordance with Paragraph 1 (above). Seller does not agree that additional terms from the Buyer, or other third party, supersede, replace, or succeed those contained herein. If Seller is required to sign documents supplied by Buyer, or other third party, especially those received after Seller's proposal has been sent, which conflict with Seller's provisions, Seller's provisions apply. Any terms or conditions contained in any purchase order or subcontract that appear to be an 'offer' for Seller to accept with Buyer's terms and conditions (especially those that are not subject to change and different from what was quoted) and Seller's pricing are rejected, and Seller's terms and conditions apply. Any requirement to review or modify Buyer's terms and conditions will result in a price adder to be paid by Buyer net 30 days.

30. **INDEMNIFICATION BY BUYER:** To the fullest extent permitted by law, Buyer shall defend, indemnify and hold harmless Seller, and Seller's agents and employees, from and against all claims, damages, losses, liabilities and/or expenses of any nature, including but not limited to, reasonable attorneys' fees and court costs, arising out of or resulting from the operation, use, testing or any other action or omission in connection with the materials or work covered by this proposal, provided that any such claim, damage, loss, liability or expense is attributable to bodily or personal injury, sickness, disease or death, sustained by any person, or to injury to, damage of, or destruction of tangible property (other than the materials or work themselves), including the loss of use, but only to the extent caused directly or indirectly by the Buyer, its sub-contractors, anyone directly or indirectly employed by them, any persons connected with the Buyer, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, liability or expense is caused in part by Seller or any other party indemnified hereunder.

31. **INDEMNIFICATION BY SELLER:** If indemnification obligations are later required and agreed to by Seller, Seller's obligations shall be limited to the following: Any indemnification obligations shall be limited to the proportionate amount of fault of Seller (as determined by a court of competent jurisdiction), as Seller's insurance carrier will not allow Seller to assume responsibility for the negligent acts of others. In no event shall Seller indemnify, defend, or hold harmless any indemnified parties for their own acts of negligence, their sole negligence or strict liability and/or liability stemming from the same. Indemnification shall be limited by limitations on the amount or type of damages, compensation or benefits payable by or for Seller and Seller's employees, under worker's compensation acts, disability benefits acts or other employee benefit acts. Seller cannot waive any immunity or defense afforded by any Worker's Compensation Act or other immunities that would provide a defense for indemnification of Seller's employees' claims. Any liability shall not exceed the total value of the proposal.

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