

ORDINANCE NUMBER O- 21531DATE OF FINAL PASSAGE SEP 21 2022

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO RATIFYING THE FIRST AMENDMENT AND AUTHORIZING THE MAYOR TO NEGOTIATE AND SIGN A SECOND AMENDMENT TO A CONTRACT WITH JCI JONES CHEMICALS, INC. FOR THE PURCHASE OF LIQUID CHLORINE TO ALLOW FOR PRICE INCREASES RELATED TO COSTS OF RAW MATERIALS AND RELATED ACTIONS.

WHEREAS, the City of San Diego (City's) Public Utilities Department (Department) operates water filtration plants that require certain chemicals as part of the treatment process; and

WHEREAS, one of the required chemicals is liquid chlorine, which is used as a residual disinfectant in the water treatment process and is required to comply with all federal and state regulations to ensure public health and safety; and

WHEREAS, in June 2017, City issued Invitation to Bid No. 10089076-17-V for liquid chlorine, and JCI Jones Chemicals, Inc. (Contractor) was the only bidder that submitted a bid; and

WHEREAS, the Council of the City of San Diego (Council) approved a contract with Contractor, effective February 1, 2018, for the purchase of liquid chlorine in an amount not to exceed \$3,200,000, by San Diego Resolution R-311485 (January 18, 2018) (Contract); and

WHEREAS, since the submission of the bid, and the approval of the Contract, the Contractor has experienced unanticipated rises in costs of raw materials necessary to make liquid chlorine, as a result of COVID-19, supply chain issues, and other world events; and

WHEREAS, Contractor has approached City and requested that City agree to an increase in the pricing for the liquid chlorine in order to allow Contractor to continue to deliver the required chemical to the City's facilities; and

WHEREAS, the City's Purchasing and Contracting Department reviewed the materials submitted by the Contractor to support its request for an increase in pricing, and conducted its own research and determined that there has been a significant increase in costs for the raw materials for this chemical; and

WHEREAS, the Department and the Purchasing and Contracting Department determined that the increased price is appropriate based on the market data, and have determined that due to the time sensitive critical need of these chemicals, it would not be advantageous to the City to use a competitive process to obtain another contractor; and

WHEREAS, a First Amendment to the Contract (First Amendment) to allow an increase in pricing was previously administratively approved on February 14, 2022, however, upon further review and in light of additional requests for increased pricing, it was determined that the First Amendment, which is in the docket materials accompanying this resolution, requires ratification by Council; and

WHEREAS, City staff is currently negotiating a second amendment to the Contract to allow the pricing for liquid chlorine to be modified to reflect an increased fixed price through September 30, 2022, and to allow the City to approve future increases in pricing based on the Contractor's actual costs of the raw materials plus a mark-up, which if approved will be effective on May 1, 2022 (Second Amendment); and

WHEREAS, the Second Amendment will also clarify the Term of the Contract, add an additional one year option to renew the Contract that if exercised would result in the Term of the Contract exceeding five years, and may update the City's General Terms and Conditions which are attached to the Contract as Exhibit C; and

WHEREAS, the temporary pricing included in the First Amendment and Second Amendment and the new pricing structure in the Second Amendment will result in an increase in compensation paid under the Contract in an amount estimated to be \$5,700,000 for the remaining Term, and as a result the Second Amendment will increase the total not to exceed amount of the Contract to \$8,900,000; and

WHEREAS, it is necessary to obtain Council authorization to enter into a second amendment prior to the Council's legislative recess in order to avoid a delay or interruption in the delivery of these chemicals once the City and the Contractor have reached an agreement on the Second Amendment; and

WHEREAS, under San Diego Charter section 99, no contract, agreement or obligation extending for a period of more than five years may be authorized except by Ordinance approved by a two-thirds majority vote of the City Council; and

WHEREAS, the Office of the City Attorney has drafted this ordinance based on the information provided by City staff including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the City Council of the City of San Diego, as follows:

Section 1. That the First Amendment to the Contract on file with the City Clerk as Document No.: 00-21531, is ratified.

Section 2. That the Mayor or designee is authorized to negotiate and sign a Second Amendment to the Contract that allows the Mayor or designee, without further approval by Council, to approve price increases related to the purchase of liquid chlorine during the term of the Contract, as follows: (i) The not to exceed amount of the Contract will be increased to

\$8,900,000; (ii) For the period from May 1, 2022, to June 30, 2022, the pricing for liquid chlorine shall be \$1,090 per ton; (iii) For the period from July 1, 2022, through September 30, 2022, the pricing for liquid chlorine, shall be \$1,450 per ton; (iv) Effective October 1, 2022, the City shall have the authority to approve additional price increases provided that they will not cause the compensation paid under the Contract to exceed \$8,900,000; (v) Any approved price increases after October 1, 2022, must be based on actual costs increases for raw materials used to manufacture liquid chlorine, that have been verified by City staff, and may include a mark-up if the Mayor determines that agreeing to a price increase or mark-up is in the best interest of the City; (vi) Clarifying that the Term of the Contract commenced on February 1, 2018, and expires on January 31, 2023, and adding an additional one year option to renew the Contract, which if exercised by the City will extend the Contract beyond five years; (vii) Exhibit C of the Contract, which is the City's General Terms and Conditions may be updated to reflect the current City General Terms and Conditions; and (viii) The effective date of the Second Amendment will be May 1, 2022. The Mayor's authority to sign the Second Amendment to the Contract is contingent upon the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 4. That the Chief Financial Officer is authorized to expend an additional amount not to exceed \$5,700,000 from the Water Utility Fund 700011 (for a total of \$8,900,000 which is authorized for the entire Contract) for the purpose of purchasing liquid chlorine under the terms of the Contract including the First and Second Amendments to the Contract for the remaining term of the Contract, contingent upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year, and contingent upon the Chief Financial Officer

furnishing one or more certificates certifying that funds necessary for expenditure are, or will be on deposit with the City Treasurer.

Section 5. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Melissa D. Ables
Melissa D. Ables
Chief Deputy City Attorney

MDA:cw
07/19/22
Or.Dept: Public Utilities Department
CC No.: N/A
Doc. No.: 3038852 _2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 13 2022.

ELIZABETH S. MALAND
City Clerk

By  _____
Deputy City Clerk

Approved: 9/20/22
(date)

 _____
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(NOTE: The date of final passage is September 21, 2022, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)

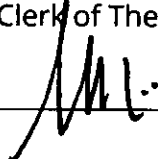
Passed by the Council of The City of San Diego on SEP 13 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 21 2022.

AUTHENTICATED BY: TODD GLORIA
Mayor of The City of San Diego, California.

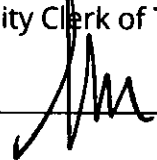
(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on AUG 02 2022, and on SEP 21 2022.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 21531