

ORDINANCE NUMBER O- 21532DATE OF FINAL PASSAGE SEP 21 2022

A ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO NEGOTIATE AND SIGN THE SECOND AMENDMENT TO A CONTRACT WITH U.S. PEROXIDE, LLC, FOR THE PURCHASE OF THE PEROXIDE REGENERATED IRON SULFIDE CONTROL AND PEROXIDE REGENERATED IRON CHEMICALLY ENHANCED PRIMARY TREATMENT PROGRAM TO ALLOW FOR PRICE INCREASES RELATED TO COSTS OF FUEL AND RAW MATERIALS AND TO EXTEND THE CONTRACT FOR ONE YEAR, AND RELATED ACTIONS.

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

WHEREAS, the City uses the Peroxide Regenerated Iron Sulfide Control and Peroxide Regenerated Iron Chemically Enhanced Primary Treatment Program, which includes hydrogen peroxide (27% and 50%) (collectively, Hydrogen Peroxide) and ferrous chloride for odor control at its wastewater facilities; and

WHEREAS, following the issuance of a Request for Proposals, the Council of the City of San Diego (Council) authorized a contract with U.S. Peroxide, LLC dba USP Technologies (Contractor) to provide the Peroxide Regenerated Iron-Sulfide Control (PRI-SCTM) and Peroxide Regenerated Iron-Chemically Enhanced Primary Treatment (PRI-CEPTM) services for various locations within the Metro Wastewater System (Contract), by San Diego Resolution R-308108, (May 2, 2013); and

WHEREAS, the Council authorized a First Amendment to the Contract by San Diego Ordinance O-20933 (May 15, 2018), extending the Contract for an additional one year term with four additional one year options, which have all been exercised by the City; and

WHEREAS, since the extension of the Contract in 2018, the Contractor has experienced unanticipated rises in costs of fuel and the raw materials necessary to make Hydrogen Peroxide and ferrous chloride 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 Hydrogen Peroxide and ferrous chloride in order to allow Contractor to continue to deliver the required chemicals 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 these chemicals; 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 that the City will benefit from extending the Contract for an additional one year period; and

WHEREAS, City staff is currently negotiating a second amendment to the Contract to allow the pricing for Hydrogen Peroxide and ferrous chloride to be increased to a fixed price through June 30, 2022, and to allow the City to approve future increases in pricing based on the Contractor's actual costs of fuel and raw materials plus a mark-up, which if approved will be effective April 16, 2022 (Second Amendment); and

WHEREAS, the Second Amendment will also 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 G; and

WHEREAS, the new pricing structure under the Second Amendment will result in an increase in compensation paid under the Contract in an amount estimated to be \$24,965,800 for the remaining term, and as a result the Second Amendment increases the total not to exceed amount of the Contract to \$92,972,976; 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, 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; 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; NOW, THEREFORE,

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

Section 1. That the Second Amendment to the Contract, which once signed by all parties will be on file with the City Clerk as Document No.: 00-21532, is approved.

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 Hydrogen Peroxide and ferrous

chloride during the term of the Contract, as follows: (i) The not to exceed amount of the Contract will be increased to \$92,972,976; (ii) For the period from April 16, 2022, to June 30, 2022, the pricing for 27% standard grade hydrogen peroxide shall be \$2.19 per gallon; (iii) For the period from April 16, 2022, through June 30, 2022, the pricing for 50% standard grade hydrogen peroxide shall be \$4.06 per gallon; (iv) For the period from April 16, 2022, through June 30, 2022, the pricing for ferrous chloride shall be \$1,213 per dry ton; (v) Effective July 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 \$92,972,976; (vi) Any approved price increases after July 1, 2022, must be based on increases in fuel costs or actual costs increases for raw materials used to manufacture Hydrogen Peroxide and ferrous chloride, 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; (vii) Adding an additional one year option to renew the Contract; (viii) Exhibit G 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 (ix) The effective date of the Second Amendment will be April 16, 2022. The Mayor's authority to sign the Second Amendment 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 3. That the Chief Financial Officer is authorized to expend an additional amount not to exceed \$24,965,800 (for a total not to exceed amount of \$92,972,976 for the entire Contract) from the Metro Sewer Utility Fund 700001, for the purpose of purchasing Hydrogen Peroxide and ferrous chloride under the terms of the Contract including all 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 4. 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 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

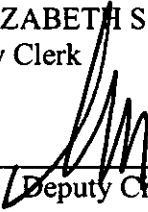
APPROVED: MARA W. ELLIOTT, City Attorney

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.: 3037873_2

I certify that the foregoing Resolution 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 [Signature], 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

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 [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-21572