

RESOLUTION NUMBER R- 314304

DATE OF FINAL PASSAGE AUG 09 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO NEGOTIATE AND SIGN A FIRST AMENDMENT TO A CONTRACT WITH KEMIRA WATER SOLUTIONS, INC. FOR THE PURCHASE OF FERRIC CHLORIDE TO ALLOW FOR PRICE INCREASES RELATED TO COSTS OF FUEL AND RAW MATERIALS, 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, one of the required chemicals is ferric chloride, which is used to coagulate particles for sedimentation in the water and wastewater treatment process; and

WHEREAS, in January 2019, City issued Invitation to Bid No. 10089520-19-V for ferric chloride, and Kemira Water Solutions, Inc., (Contractor) was the lowest responsive bidder; and

WHEREAS, the Council of the City San Diego (Council) authorized a contract between the City and Contractor with an effective date of June 10, 2019, for ferric chloride, in an amount not to exceed amount of \$24,288,061 (Contract) by San Diego Resolution R-312443 (May 17, 2019); and

WHEREAS, since the submission of the bid, and the approval of the Contract, the Contractor has experienced unanticipated rises in costs of fuel and the raw materials necessary to make ferric 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 ferric chloride 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 chemical, it would not be advantageous to the City to use a competitive process to obtain another contractor; and

WHEREAS, City staff is currently negotiating a first amendment to the Contract to allow the pricing for ferric 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 raw materials plus a mark-up, which, if approved will be effective March 1, 2022 (First Amendment); and

WHEREAS, the fixed temporary pricing included in the First Amendment and the new pricing structure under the First Amendment will result in an increase in compensation paid under the Contract in an amount estimated to be \$13,469,900 for the remaining term, and as a result the First Amendment will increase the total not to exceed amount of the Contract to \$37,757,961; and

WHEREAS, it is necessary to obtain Council authorization to enter into a First 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 First Amendment; and

WHEREAS, the Office of the City Attorney has drafted this resolution 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 RESOLVED, by the City Council of the City of San Diego, as follows:

1. The Mayor or designee is authorized to negotiate and sign a First Amendment to the Contract that allows the Mayor or designee, without further approval by Council, to approve price increases related to the purchase ferric chloride during the term of the Contract, as follows: (i) The not to exceed amount of the Contract will be increased to \$37,757,961; (ii) For the period from March 1, 2022, to April 14, 2022, the pricing for ferric chloride shall be \$895.00 per dry ton; (iii) For the period from April 15, 2022, through June 30, 2022, the pricing for ferric chloride shall be \$1,128.00 per dry ton; (iv) 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 \$37,757,961; (v) Any approved price increases after July 1, 2022, must be based on increases in fuel costs or actual cost increases for raw materials used to manufacture ferric 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; (vi) 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 (vii) The effective date of the First Amendment will be March 1, 2022. The Mayor's authority to sign the First Amendment shall be 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.

2. The Chief Financial Officer is authorized to expend an additional amount not to exceed \$13,469,900 (for a total not to exceed amount of \$37,757,961 for the entire Contract Term) from the Water Utility Operating Fund 700011 in an estimated amount of \$5,738,177, and the Metro Sewer Utility Fund 700001 in an estimated amount of \$7,731,723, which estimated amounts may be adjusted as appropriate based on actual use as, for the purpose of purchasing ferric chloride under the terms of the Contract including the First Amendment 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.

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.: 3036007

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of AUG 02 2022

ELIZABETH S. MALAND
City Clerk

By *Cornie Patterson*
Deputy City Clerk

Approved: 8/8/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on AUG 02 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 AUG 09 2022.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

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 Connie Patterson Deputy

Office of the City Clerk, San Diego, California
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