

CITY OF SAN MATEO, CALIFORNIA
PURCHASE CONTRACT
FOR FERRIC CHLORIDE SUPPLY
FROM THATCHER COMPANY OF CALIFORNIA, INC.
July 1, 2020 to June 30, 2021

THIS AGREEMENT, made and entered into this _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California, hereinafter referred to as "CITY", and Thatcher Company of California, Inc., a California corporation, with offices at PO Box 27407, Salt Lake City, UT 84127-0407, hereinafter referred to as "SUPPLIER".

RECITALS:

(a) City has taken appropriate proceedings to authorize construction of the public work and improvements or other matters herein provided, and execution of this contract.

(b) A notice was duly published for bids for the contract for the improvement hereinafter described.

(c) After notice duly given, on the date hereof, the City awarded the contract for the construction of the improvements hereinafter described to Contractor.

IT IS AGREED, as follows:

1. Scope of Work. Supplier shall perform the work as described: SUPPLY OF FERRIC CHLORIDE 38-42%.

2. Contract Price. City shall pay, the Supplier shall accept, in full payment for the work above agreed not to exceed the sum of \$230,400 (two hundred thirty thousand, four hundred dollars) which includes all applicable sales tax.

Said price is determined by the prices contained in Supplier's bid, and shall be paid as described in the Solicitation Document Package. In the event work is performed or materials furnished in addition to or a reduction of those set forth in Supplier's bid and the specifications herein, such work and materials will be paid for as described in the Solicitation Document Package.

3. The Contract Documents. The complete contract consists of the following documents: This Agreement and the Thatcher Quote. All rights and obligations of City and Contractor are fully set forth and described in the contract documents.

All of the above-named documents are intended to cooperate, so that any work called for in one, and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract will hereinafter be referred to as "the contract documents." In the event of any variation or discrepancy between any portion of this agreement and any portion of the other contract documents, this agreement shall prevail.

4. Termination. The City may terminate this contract immediately in the event of Supplier's default or breach of the contract and upon 60 days written notice without cause.

5. Schedule. This is a one year contract and will cover the period between July 1, 2020 and June 30, 2021.

6. Measurement of Quantities, Material Analysis and Identification. The Supplier shall furnish the Wastewater Treatment Plant Manager a legible copy of a Bill of Lading, Certified Analysis indicating FERRIC CHLORIDE, Weighmaster's certificate of weight and any applicable regulatory documents. Certificates shall be delivered to the Wastewater Treatment Plant Manager's designee at the job site upon delivery and before off loading of the material.

7. Payment. Shall be made on a thirty (30) day net basis upon receipt of monthly invoices.

8. General. Except as directed otherwise in these specifications, full compensation for completing all of the work indicated herein is considered to be included in the contract unit prices paid for the various items of work and no separate payment will be made therefore.

9. Partial and Final Payments. Supplier shall submit individual invoice for each delivery of FERRIC CHLORIDE to the City of San Mateo, Wastewater Treatment Plant, 2050 Detroit Drive, San Mateo, CA 94404. The invoice shall contain the following information:

- a) Purchase order number
- b) Date of delivery
- c) Item description
- d) Cost per gallon and total price
- e) Payment terms to include any prompt payment discount offered
- f) All applicable sales tax

10. General Responsibilities. The Supplier shall keep fully informed of all existing, adopted and amended federal, state and local laws, ordinances, regulations and orders and decrees which in any manner affect those engaged or employed by Supplier in the work, or the equipment used by the Supplier, or which in any manner affect the conduct of the work by Supplier, and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in any such law, ordinance, regulation, order or decree, the Supplier shall forthwith report the same to the City in writing. The Supplier shall at all times observe and comply with all such existing, adopted and amended laws, ordinances, regulations and orders.

The Supplier will be required to furnish and update, as necessary, a list of telephone numbers and names of responsible parties to be called on a 24-hour, 7 days per week basis in the event of an emergency or unusual operating conditions.

11. Time of Delivery. FERRIC CHLORIDE will be furnished F.O.B. Destination City of San Mateo Wastewater Treatment Plant 2050 Detroit Drive, San Mateo, CA (i.e., Seller pays freight charges, owns goods in transit and files any damage claims). Deliveries will be made in 3,000-gallon minimum and 5,000-gallon maximum loads.

Bidders located outside the (650) area code are requested to provide a toll free telephone number for placing orders and an email address to be used by the City to send confirmation of order.

Deliveries of FERRIC CHLORIDE will generally be prescheduled to provide the supplier with at least three days notice before delivery must be made, but the supplier must have the ability after notification to deliver the chemical within 24 hours.

Orders will be placed by phone and confirmed by email. Supplier must email a confirmation of the City's order within 24 hours, unless the City requires delivery within 24 hours then confirmation must be made within 3 hours. In the event the supplier fails to provide the chemicals within 24 hours or other scheduled delivery timeframe and the City is forced to obtain the chemical from an alternative source all additional City cost incurred will be made good at the expense of the Supplier, who agrees to pay the costs and charges immediately upon demand.

Once order is placed and confirmation received the delivery will be accepted at the City's Wastewater Treatment Plant 24-hours per day.

12. Method of Delivery. Delivery shall be by truck tank car. The supplier shall provide all unloading equipment including air padding facilities and hoses with appropriate fittings for coupling to the city's chemical unloading facilities. The unloading facilities have standard flange connections; exact size and types are available upon request. All shipping containers used shall conform to I.C.C. regulations.

13. Rejection. All shipments of FERRIC CHLORIDE will be rejected without the following:

- a) Bill of Lading
- b) Certified Analysis including Total Reducing Substance (TRS) as 100% Ferric chloride
- c) Weighmaster's certificate of weight
- d) Applicable regulatory documents

14. Material Safety Data Sheet. Each bidder must furnish a copy of a completed M.S.D.S. (Material Safety Data Sheet) with its bid and annually thereafter. Failure to furnish a completed M.S.D.S. form will result in rejection of the bid. The City has a preference for the M.S.D.S. to be submitted in electronic format. The City also requires the M.S.D.S. to be sent to the receiving location if the product supplied is considered to be a hazardous substance. All City, State, or Federal requirements for hazardous substances must be strictly adhered to.

15. Training. Supplier shall provide written instructions regarding the recommended methods for cleaning up the chemicals in the event of spills. Such instructions shall include any recommended absorbents or chemicals to be used for neutralization, if applicable, and recommended tests to be performed, such as pH, to ascertain the effectiveness of the neutralization. These instructions will be used by wastewater treatment plant personnel in cleaning up small spills associated with leaks in pumps, valves and other appurtenances.

Supplier shall provide two (2) classroom sessions annually encompassing a minimum of two hours, per session, of classroom instruction at the wastewater plant concerning manufacture, chemical properties, transport, safe handling and use of the chemicals being provided by Supplier. Supplier shall provide for all costs associated with this training.

Supplier will obtain all required federal, state, or local licenses or permits for the transport of Ferric chloride.

16. Performance by Sureties. In the event of any termination as hereinbefore provided, City shall immediately give written notice thereof to Contractor and Contractor's sureties, and the sureties shall have the right to take over and perform the agreement, provided, however, that if the sureties, within 5 days after giving them said notice of termination, do not give City written notice of their intention to take over the performance thereof within 5 days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method it may deem advisable, for the account, and at the expense of Contractor, and the sureties shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City may, without liability for so doing, take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefor.

17. Insurance. The Contractor shall provide and maintain:

- A. Commercial General Liability Insurance, occurrence form, with a limit of not less than \$2,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.
- B. Automobile Liability Insurance, occurrence form, with a limit of not less than \$1,000,000 each occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.
- C. Workers Compensation in at least the minimum statutory limits.
- D. General Provisions for all insurance. All insurance shall:
 - i. Include the City of San Mateo and The Estero Municipal Improvement District, their elected and appointed officials, employees, and agents as additional insureds with respect to this Agreement and the performance of services in this Agreement. The coverage shall contain no special limitations on the scope of its protection to the above-designated insureds.
 - ii. Be primary with respect to any insurance or self-insurance programs of City of San Mateo and The Estero Municipal Improvement District, their officials, employees, and agents. Be evidenced, prior to commencement of services, by properly executed policy endorsements in addition to a certificate of insurance.
 - iii. No changes in insurance may be made without the written approval of the City Attorney's office.
 - iv. NOTICE OF CANCELLATION: The City requires 30 days written notice of cancellation. Additionally, the notice statement on the certificate should not include the wording "endeavor to" or "But failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

18. Hold Harmless and Indemnity Provision. To the fullest extent allowed by law, the Supplier- and its employees, subcontractors, and agents -- shall defend, indemnify, and save and hold harmless City of San Mateo and Estero Municipal Improvement District, its officers, agents,

employees and volunteers from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to workers and the public), or damage to property, resulting from or arising out of the successful Supplier's – or its personnel, employees, agents, or subcontractors' -- willful misconduct or negligent act or omission while engaged in the performance of services described in this Agreement, except those matters arising from the City of San Mateo's or Estero Municipal Improvement District's sole negligence or willful misconduct. The parties intend that this provision shall be broadly construed.

19. Attorney Fees. Attorney fees in amount not exceeding \$85 per hour per attorney, and in total amount not exceeding \$5,000 shall be recoverable as costs (that is, by the filing of a cost bill) by prevailing party in any action or actions to enforce the provisions of this contract. The above \$5,000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals or actions. It is the intent that neither party to this contract shall have to pay the other more than \$5,000 for attorney fees arising out of an action, or actions, to enforce the provisions of this contract. The parties expect and hope there will be no litigation and that any differences will be resolved amicably.

20. Mediation. Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfolded" process.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

21. Provisions Cumulative. The provisions of this agreement are cumulative, and in addition to and not in limitation of, any other rights or remedies available to City.

22. Notices. All notices shall be in writing, and delivered in person or transmitted by certified mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

Director of Public Works
City of San Mateo
330 West 20th Avenue
San Mateo, CA 94403

Notices required to be given to Contractor shall be addressed as appears in the signature block as shown on the Bidder's Statement.

23. Interpretation. As used herein any gender includes each other gender, the singular includes the plural and vice versa.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereinabove named, as of the day and year first above written.

SUPPLIER

CITY OF SAN MATEO,
a municipal corporation

Craig Thatcher, President

Brad B. Underwood, Public Works Director

APPROVED AS TO FORM:

Caio Arellano, Assistant City Attorney