

CITY OF SAN MATEO, CALIFORNIA
PURCHASE CONTRACT
FOR SUPPLY OF FERRIC CHLORIDE
FROM KEMIRA WATER SOLUTIONS, INC.
JULY 1, 2022 TO JUNE 30, 2023

THIS PURCHASE AGREEMENT (“Agreement” or “Contract”), made and entered into on _____, 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 Kemira Water Solutions, Inc., a corporation, with offices at 4321 W. 6th Street Lawrence, KS 66049, hereinafter referred to as “SUPPLIER”.

RECITALS:

(A) CITY has taken appropriate proceedings to authorize the purchase of certain goods, hereinafter described, and the execution of this Contract.

(B) A notice was duly published for bids for the Contract for the purchase of goods hereinafter described.

(C) After notice duly given, on the date hereof, the CITY awarded the Contract for the purchase of goods hereinafter described to SUPPLIER.

IT IS AGREED, as follows:

1. Scope of Work. SUPPLIER shall perform the work as described: SUPPLY OF UP TO 200 DRY TONS 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 \$266,828 (two hundred sixty-six thousand eight hundred twenty-eight dollars and no cents) inclusive of 9.625% sales tax and priced at \$1,217.00 per dry ton of Ferric Chloride 38-42%.

Said price is determined by the prices contained in the Bay Area Chemical Consortium (BACC) Bid Tabulation for Bid No. 06-2022, Supply and Delivery of Ferric Chloride 38-42%, Open Date: February 24, 2022, at 9:00 A.M PDT and shall be paid as described in this Contract. 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 this Agreement.

3. The Contract Documents. The complete Contract consists of the following documents: This Agreement and the BACC Bid Tabulation.

All rights and obligations of CITY and SUPPLIER 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. This Contract may be terminated by mutual consent of both parties or by the CITY immediately in the event of SUPPLIER's default or breach of the Contract and upon 60 days written notice without cause. Upon receipt of this written notice, SUPPLIER shall stop performance under this contract as directed by the CITY. If the Contract is terminated, SUPPLIER shall be paid in accordance with the terms of the Contract for the goods delivered and accepted.

5. Schedule. This is a one-year contract and will cover the period between July 1, 2022 and June 30, 2023.

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 offloading 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 supplied goods 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.

SUPPLIER assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products. No charges for transportation containers, packing, etc., will be allowed the SUPPLIER unless so specified in this Contract.

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/SUPPLIER 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.

If SUPPLIER is located outside the (650) area code, then it is 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 (3) 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 three (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. 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

The CITY may revise shipping instructions as to any goods not as yet shipped. The CITY shall have the right to inspect any or all of the goods at SUPPLIER's place of business or upon

receipt by the CITY. By reason of its failure to inspect the goods, the CITY shall not be deemed to have accepted any defective goods or goods which do not conform to the specifications provided or to have waived any of the CITY's rights or remedies arising by virtue of such defects or non-conformance. SUPPLIER shall be responsible for payment of shipping for the return of any defective goods. Shipping documents and invoices must cite the Purchase Order number.

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 SUPPLIER and SUPPLIER'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 SUPPLIER, 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 SUPPLIER as may be on the site of the work and necessary therefor.

17. Insurance.

Coverage shall be at least as broad as:

- a) **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate

limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- b) **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- c) **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- d) **Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions** applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

If the SUPPLIER maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by the SUPPLIER.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of San Mateo and The Estero Municipal Improvement District, their elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the SUPPLIER; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the SUPPLIER including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the SUPPLIER's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **SUPPLIER's insurance coverage shall be primary** insurance as respects the City of San Mateo and The Estero Municipal Improvement District, their elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the CITY, its elected and appointed officials, employees, or agents shall be excess of the SUPPLIER's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to

the CITY.

Waiver of Subrogation

SUPPLIER hereby grants to CITY a waiver of any right to subrogation which any insurer of said SUPPLIER may acquire against the CITY by virtue of the payment of any loss under such insurance. SUPPLIER agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the SUPPLIER to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the CITY.

Verification of Coverage

SUPPLIER shall furnish the CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work or performance of the Contract commences. However, failure to obtain the required documents prior to the work beginning shall not waive the SUPPLIER's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

18. Warranties. In addition to any other expressed or implied warranties and unless otherwise agreed in writing, SUPPLIER warrants that all products delivered hereunder will be new, suitable for use as described, of the grade and quality specified, free from all defects in design, material and workmanship; in conformity with all samples, drawings, descriptions and specifications furnished; in compliance with all applicable federal, state and local laws and regulations, and free of any liens and encumbrances. These warranties shall not be deemed to exclude SUPPLIER's standard warranties or other rights or warranties which the CITY may have or obtain.

19. Hold Harmless and Indemnity Provision. SUPPLIER agrees to hold harmless and indemnify City of San Mateo and Estero Municipal Improvement District, their elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising from performance of this Contract, including claims, loss, liability, damage, and expense caused or claimed to be caused by passive negligence of City of San Mateo or Estero Municipal Improvement District, their elected and appointed officials, employees, and agents; provided, however that this provision does not apply to claims, loss, liability, damage or expense arising from the sole negligence or willful misconduct of City of San Mateo

or Estero Municipal Improvement District. SUPPLIER will defend City of San Mateo and Estero Municipal Improvement District, their elected and appointed officials, employees, and agents, against any such claims.

20. Remedies. In the event of SUPPLIER's breach of this Contract, CITY may take any or all of the following actions, without prejudice to any other rights or remedies available to the CITY by law: (a) require SUPPLIER to repair or replace such goods, and upon SUPPLIER's failure or refusal to do so, repair or replace the same at SUPPLIER's expense; (b) reject any shipment or delivery containing defective or nonconforming goods and return for credit or replacement at SUPPLIER's option, said return to be made at SUPPLIER's cost and risk; (c) cancel any outstanding deliveries and treat such breach by SUPPLIER as SUPPLIER's repudiation of this contract. In the event of the CITY's breach hereunder, SUPPLIER's exclusive remedy shall be SUPPLIER's recovery of the goods or the purchase price payable for goods shipped prior to such breach.

21. Assignment. SUPPLIER shall not delegate or subcontract any duties and services or assign any rights or claims under this Contract without the CITY's prior written consent.

22. 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.

23. 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.

24. Governing Law and Venue. This Contract between the parties evidenced hereby or attached thereto shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state. In the event of litigation, venue will be in the County of San Mateo.

25. 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.

26. 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 SUPPLIER shall be addressed as appears in the signature block as shown on the Bidder's Statement.

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

This document represents the entire and integrated agreement between CITY and SUPPLIER and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and SUPPLIER.

[SIGNATURE PAGE FOLLOWS]

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

Christina Imbrogno,
Commercial Support Manager

Azalea Mitch,
Public Works Director

APPROVED AS TO FORM:

Gayla Walker
Commercial Support Specialist

Linh Nguyen,
Assistant City Attorney